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Supreme Court, U.S.
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OFFICE OF THE CLERK

No. _____

IN THE

Supreme Court of the United States

MICHAEL ANTHONY HURLEY
JO ANNA PICCIONE HURLEY

Petitioners

Versus

UNITED STATES BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT, of the US Department of Homeland Security;
BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES, Of the US Department of Homeland Security

Respondents

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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Proceeding Pro Se

QUESTIONS PRESENTED FOR REVIEW

1) Whether the 5th Circuit erred in concluding that they were without jurisdiction due to the untimeliness of Michael Hurley's Petition for Review or due to his having been removed under section 212(a)(2) of the Act, because, 8 U.S.C. 1252(f)(2) provides that a court may "enjoin the removal of an alien pursuant to a final order under this section," (if) "the alien shows by clear and convincing evidence that the entry or execution of such order is prohibited as a matter of law," which Michael Hurley has done in his brief to the court. (See questions 3-7) (See also INA 242 (d)(2)...wherein no court decided the validity of the order of removal) and Constitutional Amendment 14.

2) Whether the 5th Circuit erred in concluding that they were without jurisdiction due to the untimeliness of Michael Hurley's Petition for Review or due to his having been removed

under section 212(a)(2) of the Act, because the Constitutionality of the Immigration and Nationality Act of 1996, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), and 8 U.S.C. 1252 are in question when viewed in light of Article 1, Sections 9 & 10 of the Constitution of the United States, which provides that no law be passed that impairs the Obligation of Contracts, nor shall a Bill of Attainder or ex post facto law be passed, and Amendments 1,4, 5, 9 and 14 prevent unlawful seizure and provide for the exercise of *due process* and *equal protection* – all of the civil rights belonging to Jo Anna Piccione Hurley, a citizen of the United States, which ought to have protected the liberties of Michael and Jo Anna Hurley and the Obligations of their Contract of marriage through the exercise of Due Process. Herein lies the reason for the national importance of this Writ of Certiorari.

3) Whether the Italian Presidential pardon/expungment of Michael Hurley's 4 decade old drug conviction in Italy, bars use of that conviction as the means of the removal of Michael Hurley, expunges the record, and wipes out the conviction, so that there is no conviction for which Hurley would have had to answer, "Yes" to a question about his having a conviction, and whether denial of that would be tantamount to denial of equal protection under the law, which is the constitutional rights of his wife, Jo Anna Hurley, citizen.

4) Whether the Hurley's admission to a conviction of possession of 69 grams of hashish (about 2 ounces) to an American Embassy in Munich in 1972 cannot be used as the sole record for his removal not only because that conviction was expunged and pardoned, but also because that admission was not obtained according to the rules set forth by the BIA, but was obtained improperly.

5) Whether the Visa Waiver on which Hurley entered the United States on April 26, 2003 cannot be the means to prevent him from receiving due process, because he attempted to use his B-1, B-2 Visa and was not allowed to do so by the official at the pre-flight inspection station.

6) Whether Michael Hurley is a rehabilitated person, who has established good moral character due to being given voluntary departure in June, 2004 by ICE, and because it has been almost 40 years since his conviction and he has no others.

7) Whether the deportation of Michael Hurley has caused irreparable harm to Jo Anna Hurley, through the dire consequences which occurred because of the loss of him.

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the following list identifies all of the parties appearing here and before the United States Court of Appeals for the Fifth Circuit. The petitioners here and appellants below are:

Plaintiffs-Appellants

Michael Anthony Hurley and
Jo Anna Piccione Hurley
Proceeding *pro se*

Defendants-Appellees

United States Bureau Of Immigration and Customs Enforcement, of the US Department of Homeland Security

Bureau of Citizenship and Immigration Services, of the US Department of Homeland Security

Solicitor General of the United States
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Attorneys:

Presently there are no attorneys on this case,

but in April, 2007 the defendant was

represented by:

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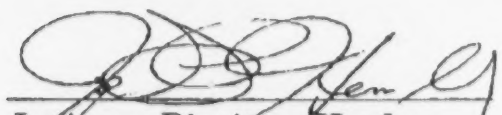

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Former U.S.C.A. 1254 (a)(1); (e) – Voluntary Departure

8 U.S.C. 1101(f) Good Moral Character

8 U.S.C. 1252(f)(2) Injunctive Relief

8 U.S.C. 1254(a)(1) testimony

28 U.S.C.1254(1) Certiorari

28 U.S.C. 1331 – Federal Question

28 U.S.C. 2403(a)

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217 Visa Waiver Program

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242(d)(1)&(2)Judicial Review Final Orders

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Louisiana Civil Code Article 98 titled "Mutual Duties of Married Persons

Senate Bill No. *S.3433.* 109th Congress on Behalf of Michael A. Hurley

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JURISDICTION

On May 11, 2004 A Notice of Denial of Application to Register Residence or Adjust Status was entered against Michael Anthony Hurley, Visa No. A95 609 022 (Appendix E)

On May 17, 2004 a Notice of Intent to Deport...was entered against Michael Hurley, (Appendix F)

On May 17, 2004 an Order of Removal Section 217 was entered against Michael Hurley, (Appendix G)

On May 17, 2004 a Stay was GRANTED to Michael Hurley to prepare for "voluntary departure" set for June 21, 2004

On June 22, 2004 a Stay of Deportation or Removal was GRANTED until January 21, 2005 (Appendix H)

On January 13, 2005 a Stay of Deportation was GRANTED through deliberation of the certified private Senate bill on behalf of Michael Hurley to be introduced by Senator Mary Landrieu. (Appendix H).

On May 15, 2006 an order of removal for Michael Hurley was set for June 14, 2006

On June 6, 2006 private bill S.3433 on behalf of Michael Hurley was introduced by Senator Mary Landrieu.

On June 16, 2006 an order of removal for Michael Hurley was set for July 6, 2006.

On July 5, 2006 a request for a report from ICE was entered by the Senate Subcommittee on Immigration.

On about July 6, 2007 a Stay of Removal was GRANTED Michael Hurley for the duration of Bill S.3433.

On September 28, 2006 a memorandum of Information (the report) concerning Michael Hurley was delivered to Senator John Cornyn.

The judgment of the U.S. District Court for the Western District of Louisiana DENYING for lack of jurisdiction of the plaintiff's Original Motion for Temporary Restraining Order, Preliminary Injunction, Permanent Injunction and Other Relief was entered on April 4, 2007. (Appendix B)

A request for Stay of Deportation was delivered to USCIS – New Orleans District on April 4, 2007. DENIED.

A notice of Appeal was timely filed April 5, 2007 in the U.S. Court of Appeals 5th Circuit which requested Temporary Restraining Order, Preliminary Injunction, Permanent Injunction, Other Relief and Petition for Review.

On April 10, 2007 the motion to stay the deportation of Michael A. Hurley pending disposition of the appeal was DENIED by the 5th Circuit. (Appendix D)

After receiving extensions of time, the Brief of Appellants was timely filed on Sept. 27, 2007 with the 5th Circuit.

An order that DISMISSED Case No. 07-30314 for lack of jurisdiction was entered on December 6, 2007 by the 5th Circuit – Judges Wiener, Garza and Benavides. (Appendix A)

A Petition for Panel rehearing was timely filed on January 20, 2008.

An order that DENIED Petition for Panel Rehearing in Case No. 07-30314 was entered on Feb 13, 2008 by the U.S. Court of Appeals 5th Circuit. (Appendix C)

Jurisdiction is found under:

28 U.S.C. 1254(1) Certiorari (Appendix K)

8 U.S.C.1252(f) Injunctive Relief,

INA 242(d)(1)&(2) Judicial Review of Final Orders of Removal (See Statutory Provisions)

Jurisdiction found under 28 U.S.C. 2403(a):

(Appendix L)

Pursuant to the duties imposed upon it by virtue of 28 U.S.C. 2403(a), this Court will please certify to the Office of the Attorney General that the constitutionality of an Act of Congress affecting the public interest is herein drawn in question.

Likewise, this Court will please certify intervention for presentation of all evidence admissible in the above entitled case, and for argument(s) on the question of the constitutionality of the Immigration and Nationality Act of 1996, hereafter the Act of 1996, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996,

hereafter, IIRIRA, and 8 U.S.C. 1252.

(Appendix P).

Finally, jurisdiction is found under the powers of Constitutional Interpretation of the Supreme Court of the United States of America.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article 1, Section 9 of the Constitution of the United States: "No Bill of Attainder or expost facto law shall be passed."

Article 1, Section 10 of the Constitution

"No State shall...pass any...Law impairing the Obligation of Contracts"

Amendments to the Constitution:

Amendment 1: "to petition the Government for a redress of grievances."

Amendment 4: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..."

Amendment 5: "No person shall be ...compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law.."

Amendment 14: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States" and the Equal Protection Clause.

8 U.S.C. 1252(f)(1)&(2)

(f) Limit on injunctive relief

(1) In general

Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction...to enjoin or restrain the operation of the provisions of part IV of this subchapter, as amended by the...[IIRIRA]...of 1996, other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.

(2) Particular cases

Notwithstanding any other provision of law, no court shall enjoin the removal of any alien pursuant to a final order under this section unless the alien shows by clear and convincing evidence that the entry or execution of such order is prohibited as a matter of law.

INA 242(d)(1)&(2)

(d) Review of Final Orders – A court may review a final order of removal only if–

(1) the alien has exhausted all administrative remedies available to the alien as of right, and

(2) another court has not decided the validity of the order, unless the reviewing court finds that the petition presents

grounds that could not have been presented in the prior judicial proceeding or that the remedy provided by the prior proceeding was inadequate or ineffective to test the validity of the order.

Title II, Section 212(a)(2)(A)(i)(II) Grounds of Inadmissablility – Controlled Substances.

(Appendix M)

Title II, Section 212(a)(6)(C)(i)

Misrepresentation (Appendix E, p.2)

Title II, Section 217 – Visa Waiver

(Appendix O)

Title II, Section 237(a)(1)(B) Classes of Deportable Aliens – Inadmissability.

(Appendix N)

8 U.S.C. 1101(f) Good Moral Character

STATEMENT OF THE CASE

Jurisdiction in the court of first instance, the U.S. District Court, Western District of Louisiana, Lafayette-Opelousas was filed under prelimary injunction, pursuant to Rule 65, Fed. R. Civ. P., and 28 U.S.C. 1331.

On January 31, 2003, Michael Anthony Hurley, an English subject, married Jo Anna Piccione, a U.S. citizen, in Lafayette, Louisiana, while visiting on a Visa Waiver. The Hurleys, after traveling to and returning from Europe on April 26, 2003, investigated how Michael could legally immigrate to America.

On July 24, 2006, Michael Hurley's I-485 package to apply for permanent residence at

the New Orleans INS was accepted, $1,650.00 was paid, and he received the file/visa number A95609022, while he was still legally in the U.S. **His Visa Waiver had not expired.** Michael and Jo Anna were very careful to make sure that this was done BEFORE any chance that his visa would expire, so that they would be in obedience to the law.

About May 14, 2004 they returned to the INS regarding his work permit, but Michael was arrested and presented with his own admission that he signed in 1972 at the Munich U.S. Embassy, saying, "I was imprisoned in Italy from 22nd August 1968 to 30 May 1970 for possession of 69 grams of

hashish." (See Notice of Denial...to...Adjust Status, p.2) **(Appendix E).**

Pursuant to INA 212(a)(2)(A)(i)(II) and 237(a)(1)(B) Michael Hurley was deemed inadmissible. (See "Order of Removal, Section 217"/ **Appendix G**, and "Notice of Intent to Deport..." / **Appendix F**). He was also ordered to be deported for violating his admission terms under Section 217 Visa Waiver – this despite the fact that he had been given visa A95 609 022, while still legally in U.S.

ICE officials told Michael that due to entering the U.S. on a Visa Waiver, he had no rights to judicial review. Despite that Michael was released the same day, received a one

month stay from ICE and a *voluntary departure* date was set for June 21, 2004.

Within a few days the Hurleys contacted two of the best immigration lawyers in New Orleans. Both advised the Hurleys to seek a private bill from a Senator or seek a Presidential Pardon. Both were reluctant to take on the Hurleys case and one flatly refused, emphasizing that he would be "taking their money for nothing", because the Immigration laws of 1996 were so "harsh", that it was impossible for Michael to get relief other than seeking a pardon. Neither mentioned the 30-day rule. Later, talks with Senator Hatch's office and with the New Orleans ICE office also did not inform the

Hurleys of the 30 day window to file a petition for review. And yet, everyone the Hurleys spoke with were made aware of Michael's Presidential pardon of Italy and his expungement. (*Socop-Gonzales v. INS*, 272 F.3d 1176, 1193 (9th Cir. 2000): Timeliness rule waived because of misinformation). (And, *Nagahi v. United States*, 219 F.3d 1166, (10th Cir.1986) generally)

It was the pardon with its expungement (**Appendices I & J**) that caused the Hurleys to believe that he did not have to answer "yes" to questions about any former convictions. They believed that a pardon completely wipes out a conviction for all purposes, and that while an expungement removes a citation from a

record, a pardon indicates the crime has been pardoned or forgiven as though it is no more and never was. (Ex Parte Garland, 71 U.S. 333, 381 (1866)

As Michael Hurley prepared to voluntarily depart on June 21, 2004, they received a call from Senator Orrin Hatch's office saying they had obtained a stay but it wasn't official until New Orleans ICE was contacted. Since it wasn't yet official, the Hurleys made the decision to go to the airport. Thirty minutes before boarding the plane at Lafayette Regional Airport, Michael received a cell phone call saying a 7 month stay of deportation through Hatch's Washington office was communicated to the Field Office

Director in New Orleans, Craig Robinson, and was official.

Within the period of the 7 month stay on about January 24, 2005, Senator Mary Landrieu filed a private bill for Hurley and in a letter addressed to Landrieu, dated Jan. 13, 2005, Director Robinson at ICE granted a stay for the "duration of the bill." (Appendix H) (Record p.18/Exhibit 6B).

Unable to find the private bill in May, 2006, ICE sent Michael an order of removal. It was stayed for one day, due to Senator Landrieu filing a new private bill for Michael in June, 2006, bill no. S.3433, (Addendum p.19). A new order was sent to Michael with a removal date for July 6, 2006, because they

had not received notice from the Senate Subcommittee on Immigration to begin an investigation. Michael was timely taken to Oakdale Detention Center by Jo Anna on July 5th, and about 19 hours before Michael would have been put on a plane for removal, he was stayed again due to the investigation being requested by the Subcommittee.

In August, 2006 the investigation was completed and found "no negative evidence" about Hurley, but there was a serious error in the investigation document, which set an incorrect date for when Jo Anna Hurley filed a fiancé petition (which was actually filed with the I–485 package on July 24, 2003.) This error implied that Jo Anna had requested a

stay on April 25, 2003 (when she was in Europe with her husband) and that Michael's status at that time was illegal. *This error could have effected the Senate's later decision not to pass Michael's private bill.* (Record p.14/Ex.5A)

He was not illegal. **Michael was never without a Visa or an officially granted stay of deportation during the 4 years he resided in Louisiana, *which were all administrative remedies*, up until the last two weeks before his removal. (Appendix H)** (Record pp. 17,18,19/Exhibits 6A,6B,6C) *The Hurley's complied with the law completely during Michael's years in Louisiana.*

Neither Hurley's nor any other private immigration bill in the 109th session of Congress passed, so in 2007 Jo Anna sought a new bill which came too late. An order of removal was received by Michael on March 23, 2007. Michael reported to Oakdale ICE headquarters on April 6th at about 1:00 pm., the hour they requested due to Jo Anna's disability. He remained there in detention for 11 days until he was deported to London, England on April 16, 2007. A private bill for Hurley, S.983, was introduced into the Senate by Sen. Landrieu a few days before Hurley was deported.

On April 3, 2007 Jo Anna filed an Injunction on behalf of Michael, in the U.S.

District Court. It was dismissed for jurisdiction April 4th. (**Appendix B**). April 4th, Jo Anna filed a request for stay of deportation with USCIS. April 5th, Jo Anna appealed with an Injunction and Petition for Review in the 5th Circuit Court of Appeals.

On April 10, 2007 the motion to stay the deportation of Hurley pending disposition of the appeal was DENIED by the 5th Circuit. (**Appendix D**)

After receiving extensions of time, the Brief of Appellants was filed timely on September 27, 2007 with the 5th Circuit.

An order that DISMISSED Case No. 07-30314 for lack of jurisdiction albeit was sympathetic to the Hurley's plight was

entered on December 6, 2007 by the 5th Circuit. (Appendix A)

An order that DENIED a Petition for Rehearing was entered on Feb 13, 2008 by the 5th Circuit. (Appendix C) A request for extension of time to file the Writ of Certiorari was DENIED on April 30, 2008.

REASONS FOR GRANTING THE PETITION

Petitioners plead with the court to consider the significance of the Hurley's petition as it pertains to the many immigration cases in which there are family units with deportable immigrants whose members are Citizens of the United States of America. The Constitutional rights of these citizens must be protected at the same time that the nation

protects itself from undesirable persons entering our shores.

Since the Immigration and Nationality Act of 1996, the Congress has tightened the noose on relief for immigrants found to be inadmissible or deportable. The scant relief in the law for part–immigrant families with U.S. citizen members separated by deportation has caused many members of Congress to revisit the quickly passed Immigration and Nationality Act of 1996, passed on the anniversary of the Oklahoma City bombing and the quickly passed IIRIRA, passed in an election year.

The House introduced the following bills in hopes of creating more fairness: The "Fix 96"

bill in July, 2000, and H.R.213 in Jan., 2007, neither of which passed. The Senate introduced but did not pass S.173 in January, 1999, S.871 in April, 1999 and S.3120 in September, 2000. Only H.R.5062 passed, and it passed unanimously. It was a bill which offered amendments that limited the retroactivity of the new aggravated felony definition to crimes committed before 1996, and gave immigrants with pre-1996 convictions relief through cancellation of removal. In a press statement from Congressman Bob Filner, September 28, 2000 he noted that he honored his colleagues for restoring fairness to part-immigrant/ part-American families broken by the harsh 1996

immigration law. Though it seemed the Senate would surely pass it, intense debate over visas and election year jitters prevented its passage. (See Wolchock, C.L., "Legislative Efforts to Restore Immigrant Rights," *Human Rights Magazine*, American Bar Association, Winter 2001).

A political body as the Congress does not always render decisions that are free from the influence of a sometimes biased prevailing majority of its citizens even when those decisions create oppression for a disliked minority. What they have not been as yet able to fix may need to be corrected by the Courts, which have the power of judicial review to enforce the Constitution's guarantees and to

preserve the freedoms of American citizens in family units with immigrants. Chief Justice Warren in delivering the opinion of the court in *U.S. v. Brown,* 381 U.S. 437 (1965) quoted Alexander Hamilton, who said:

> "If the legislature...may banish at discretion all those whom particular circumstances render obnoxious, without hearing or trial, no man can be safe, nor know when he may be the innocent victim of a prevailing faction. The name of liberty applied to such a government, would be a mockery of common sense."

The constitutional rights of every American citizen hang in the balance today, because no one is immune from the chance that they will one day have an immigrant family member deported without Due Process for the smallest reasons. Due to the harshness of current

immigration law, there will be a substantial number of American citizens, who will be effectively deported with their immigrant spouses, parents or children without Due Process and no Redress. There is currently a national immigration crisis and a desperate need for relief for the families of immigrants.

In examining **Question (1)** we refer to the opinion by Justice Kennedy in *Kenyeres v. Ashcroft,* 538 U.S. 1301(2003), wherein he noted that the question of holding a strict or more lenient standard to 8 U.S.C.1252(f)(2), **"has divided the Courts of Appeals."** He quotes *Andreiu, v. Ashcroft,* 253 F. 3d 477 (CA9 2001) (en banc) at 483: "("[P]etitioner must show 'either (1) a probability of success on the

merits and the possibility of irreparable injury, or (2) that serious legal questions are raised and the balance of hardships tips sharply in the petitioner's favor'" (quoting *Abassi v. INS,* 143 F. 3d 513, 514 (CA9 1998))," and *Bejjani v. INS,* 271 F. 3d 670 (CA6/2001) which required:

> "(a showing of '(1) a likelihood of success on the merits; (2) that irreparable harm would occur if a stay is not granted (3) that the potential harm to the movant outweighs the harm to the opposing party if a stay is not granted; and (4) that the granting of the stay would serve the public interest.' (quoting *Sofinet v INS,* 188 F. 3d 703, 706 (CA7 1999))),"

He noted that: "A standard that is excessively stringent may impede access to the courts in meritorious cases," but also credited 1252(f)(2) as Congress's effort to relieve the courts from

consideration of meritless petitions. And he said, "Given the significant nature of the issue and the acknowledged disagreement among the lower courts, the Court...should examine and resolve the question in an appropriate case. This, however, is not an appropriate case."

The petitioners hope the Court will find that the Hurley's case is an appropriate case. Unlike the former case, the Hurley's case is sufficiently meritorious to be considered, because the petitioners will show that the deportation of Michael Hurley is prohibited as a matter of law, and because no court has yet heard their case.

Untimeliness of the Petition for Review

Petitioners contend that the 5th Circuit erred in dismissing their appeal due to the petition for review being untimely for these reasons:

The Hurleys maintain that the 30-day requirement for filing a petition for review is arbitrary and unconstitutional, because it denies the immigrant the opportunity for due process by making the window of opportunity to file so short that it is effectively no window at all, and because it carries with it the expectation that immigrants have a working knowledge of aspects of immigration law that are usually known only to attorneys. Given that in the days immediately following

Michael's original order of deportation, the Hurleys sought the help of immigration attorneys, but found none who would take on their case, due to the "harshness" of the 1996 laws, the Hurleys were unable to discover this 30 day requirement. Surely, this cannot mean that because they missed this unreasonably short 30 day window, they can never receive judicial review and that Michael's deportation and 10–year bar will be their permanent condition?

In our brief we cited *Moore v. City of East Cleveland, Ohio*, 431 U.S. 494 (May 31, 1977). (Addendum, p.12) In Justice Powell's opinion he states:

> "The full scope of the liberty guaranteed by the Due Process Clause cannot be found in or limited by the precise terms of the specific guarantees... provided in the Constitution. This 'liberty' is not a series of isolated points...the freedom of speech, press, and religion;...and so on. It is a rational continuum which...includes a freedom from all substantial arbitrary impositions and purposeless restraints,..."

Can the Court consider these rigid restrictions to due process to be anything less than an "arbitrary imposition and purposeless restraint"? We cannot.

On page 11 of the Hurley's brief they point out that the 30 day requirement for filing a petition for review according to INA 242(b)(1) is (under the facts of this case) in conflict with the requirement that all administrative remedies have been exhausted – INA

242(d)(1). Even if the Hurley's had filed within 30 days, they would not have met the second requirement because all administrative remedies had not yet been exhausted, since they had a stay of deportation granted by ICE, which is an administrative remedy, and before that had expired, they received a 7 month stay through Senator Hatch, also granted by ICE. Thus, they could not have fulfilled the first and second requirements in 242 (b)(1) and 242(d)(1), respectively. When a law makes it nigh unto impossible to receive due process, that law is a Bill of Attainder and is unconstitutional, because due process is a guarantee in the Bill of Rights.

The consideration of Question (2) is also the primary consideration why the Hurley's case is an important case to review due to its influence on the national immigration crisis today. There is one primary reason why part – immigrant/part–American families are being separated through deportation for the smallest reasons, which can include a youthful shoplifting conviction 20 years ago by an otherwise law–abiding immigrant. *The primary reason for the separation of these families through deportation is that the Constitutional rights of the U.S. citizens in these families do not outweigh in any stretch of the imagination the immigrant's lack of*

rights as currently found in the Act of 1996, IIRIRA, and 8 U.S.C. 1252.

Thus, one of the most pressing Constitutional questions is: Does current immigration law *violate* Artcle 1, Section 10, Clause 1 – the "Obligation of Contracts" clause – of the Constitution of the United States of America by impairing the ability of the Hurleys to fulfill the obligations of their marriage contract, while at the same time maintaining Jo Anna Hurley's natural right to keep her liberty to live in her own native land, which right is protected by the Due Process Clause in the 5th and 14th Amendments to the Constitution. These Amendments *require* that Jo Anna cannot loose her liberty to live in

her native land *except by Due Process.* Jo Anna Piccione Hurley, a natural–born citizen of the United States clearly has every right to live on this land – her home. The 5th Amendment states: "No person shall...be deprived of life, liberty, or property, without due process of law..."

Thus, the Constitutional question arises that, if the law that deported Michael Hurley does not allow him to receive Due Process, and it *either* impairs the fulfillment of the obligations of the Hurleys' contract of marriage (against Constitution Article I, Section 10, Clause 1), *or* it forces Jo Anna to live outside her native land, in order to fulfill her obligations to her husband, thus loosing

her liberty without even a peep in a court of law (against the Due Process clause of the Constitution), *then* that law is unconstitutional and void, because it does not have greater weight than the Constitution of the United States upon which all our laws stand.

Chief Justice John Marshall writing the majority opinion in *Marbury v Madison,* 5 U.S. 137 (1803) wrote:

> "...The theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void...It is emphatically the province and duty of the judicial department to say what the law is."

The 4th amendment states that: "The right of the people to be secure in their persons,

houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..." Yet, Jo Anna Hurley's husband, who belongs to her by contract of marriage – incredibly more precious to her than her "house, papers or effects" – was seized and removed from her without Warrant nor any opportunity to refute the charges against him in a court of law. Supreme Court Justice Louis Brandeis wrote, "The makers of our Constitution ...conferred, as against the government, the right to be let alone – the most comprehensive of rights and the right most valued by civilized men." Napolitano, A.P., *The Constitution in Exile*, c2006, Thomas Nelson Inc, Nashville, Tenn., p. 236)

The Supreme Court's decision that the Constitution protects against arbitrary interference between the state and the integrity of family life in *Moore v. City of East Cleveland,* Ohio supports the Hurleys position:

> " '*This Court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment.*' A host of cases, tracing their lineage to Meyer v. Nebraska, 262 U.S. 390(1923), and Pierce v. Society of Sisters, 268 U.S. 510(1925), have consistently acknowledged a 'private realm of family life which the state cannot enter'..."
>
> "Appropriate limits on substantive due process come not from drawing *arbitrary lines* but rather from careful 'respect for the teachings of history [and] solid recognition of the basic values that underlie our society.' *Our decisions establish that the Constitution protects the sanctity of the family precisely*

> *because the institution of the family is deeply rooted in this Nation's history and tradition.* It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural." [Italics mine]
> See *Id*, 431 U.S. 494 (May 31, 1977).

Jo Anna Hurley maintains without equivocation that her Constitutional Rights cannot be protected if her immediate family – she and her immigrant husband – are not both *equally* protected by the Constitution and by statutes of law that *respect* the fundamental rights of all Americans and their immediate family immigrant relatives. The immigration statutes which deny Michael Hurley due process, by arbitrarily restricting jurisdiction, such as the 30 day timeliness rule, and which make no exception for

immigrants who are in immediate family relationships with American citizens, also deny due process to Jo Anna Hurley, a native–born American citizen, because of the familial obligations of her contract of marriage with Michael. Therefore, those parts of the immigration laws which grossly restrict due process and jurisdiction and have the effect of denying her these rights should be void and of no effect, because Jo Anna had a right to due process before her husband was seized, detained, deported and barred from her native soil – even her own home and private land. What a HUGE intrusion of government into the lives and liberty of private citizens!

Further, the 5th Circuit Court of Appeals has the power and jurisdiction to grant a Petition for Review of Michael Hurley's immigration case, because his immigration case has a direct and powerful effect on Jo Anna Hurley's liberty, which liberty is protected by Due Process. The 5th Amendment provides that *anything*, including a family member's immigration case and deportation, that can deny liberty to an American citizen by its effect on the family, is reviewable by the courts of this land.

The 14th Amendment provides that: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States," *but 8 U.S.C.*

1252(f)(1) abridges the Constitutional immunities belonging to Jo Anna, because it precludes her from finding jurisdiction as a party in an action to enjoin her husbands removal other than in the Supreme Court! 8 U.S.C. 1252(f)(1) cannot bar jurisdiction for the 5th Circuit, because the 5th and 14th Amendments have precedent. Their jurisdiction is found in the U.S. Constitution.

Jo Anna is bound in a contract of marriage, which she cannot break without grave spiritual, physical, emotional and *legal* consequences. Article I, Section 10, Clause 1 of the Constitution of the United States says, "No State shall ..... pass any....Law impairing the Obligation of Contracts..."

In the State of Louisiana, where Michael and Jo Anna were married, the law makes clear the obligations husbands and wives have to one another in a contract of marriage. In Louisiana Civil Code Article 98 titled "Mutual Duties of Married Persons" it states: "Married persons owe each other fidelity, support and assistance." Based on the original Louisiana Civil Code of 1870, the revision comments from 1987, paragraphs C and E state that:

> "the jurisprudence...has held that the spouses' duty to support each other is limited to furnishing the necessities of life. (*Smith v. Smith* 382 So. 2d 972 (La. App. 1st Cir. 1980)....The duty to render assistance, insofar as it is separate from that of support, includes the personal care to be given an ill or infirm spouse. (*James v. State* 154 So. 2d 497 (La. App. 4th Cir. 1963)....

> Paragrah (E) The spouses duties under this article, as a general rule, are *matters of public order from which they may not derogate by contract.* (*Favrot v. Barnes* 332 So. 2d 873 (La. App. 4th Cir. 1976)." [Italics mine]

Thus, Louisiana law clearly recognizes marriage as a contract. And as a contract, it carries certain obligations. These obligations are not mere whims, but are matters of public order and public policy of the State of Louisiana. It is clear the Hurleys cannot perform their marital duties and fulfill the legal obligations of their contract of marriage without living together. Also, though a spouse's duty (Michael's duty in this case) is to "furnish the necessities of life" and to give personal care to an "ill or infirm spouse" (Jo

Anna) and this is a "matter of public order," Michael is barred from obeying this law because of his deportation, and was barred prior to that, when he was not allowed to have a work permit from USCIS even though he received 4 stays and lived in Louisiana with his wife for 4 years. By Michael's obedience to immigration law (which prevented him from getting a job), he was forced to become delinquent in fulfilling the expectations of Louisiana law regarding his marriage contract with Jo Anna, because he was never able to earn a profit at her failing business, until 4 months before his deportation, And this was their only legal option. *Though in 4 years Michael never attempted to get a job, the only*

American's job that he would have been replacing was the job that his disabled wife, Jo Anna, had not been able to do for herself for years.

Presently, the Hurley's cannot fulfill their marital obligations because Jo Anna remains at home to divest herself of their business holdings and appeal to the courts.

In *Bridges v. Wixon*, 326 U.S. 135 (1945), the constitutionality of Section 23 of the Alien Registration Act of 1940 was reviewed by the Supreme Court. Justice Murphy in his concurring opinion wrote that the statute was unconstitutional and based on an assumption "that is obnoxious and intolerable when

viewed in light of the supernal heritage and ideals of this nation." He wrote:

> "This assumption underlying the statute is that the 'plenary' power of Congress to deport resident aliens is unaffected by the guarantee of substantive freedoms contained in the Bill of Rights...From this premise it follows that Congress may constitutionally deport aliens for whatever reasons it may choose, limited only by the due process requirement of a fair hearing...I am unable to believe that the Constitution sanctions that assumption or the consequences that logically and inevitably flow from its application."

Michael Hurley was deported without even a fair hearing in an immigration court, and for a reason that has absolutely no bearing on the moral upstanding man that Michael is today. *Bridges* supports the Hurley's request for due process from the 5th Circuit.

Our brief referred to *U.S. v Gutierrez,* 983 F. Supp. 905, 913 (N.D. Cal. 1988), wherein the court's opinion was that "aliens receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country..." Michael Hurley has received no such constitutional protection though he married an American citizen, became a loved member of her family, managed his wife's business and established good relationships. Does this not cause the Court to question the constitutionality of the laws that deny him due process or jurisdiction in any court except the Supreme Court? (See citation for 8 U.S.C. 1252(f)(1) (Injunctive Relief).

Justice Murphy in *Bridges* went on to say: "[T]he very provisions of the Constitution negative the proposition that Congress, in the exercise of a 'plenary' power, may override the rights of those who are numbered among the beneficiaries of the Bill of Rights."

Is there anything about INA 242 – Judicial Review – or 8 U.S.C. 1252 that remotely resembles Justice Murphy's emphasis on the constitutional rights of aliens to receive due process? Finally, Justice Murphy states:

> "The deportation statute is further invalid under the 'clear and present danger' test enunciated in *Schenck v. United States*, 249 U.S. 47, 39 S.Ct. 247, 249...Deportation, with all its grave consequences, should not be sanctioned on...weak and unconvincing proof of a real and imminent threat to our national security."

Is there any reason to believe that Michael Hurley – who is employed as a Security Guard for Heathrow Airport in London, and has been given counter–terrorism clearance in Great Britain (the highest form of clearance) after an exhaustive investigation on his life by Scotland Yard – is a 'clear and present danger' to the United States? This is one of the measures of the constitutionality of the above statute in question in Bridges.

Napolitano writes, "The Constitution was intended to protect individuals and minorities from the tyranny of a more numerous and powerful majority." (supra, p. 95) The protection of the majority from possible or

irrationally feared criminal activities of immigrants with age-old drug convictions, does not give Congress the right to deny part-American/part-immigrant families their Due Process rights as provided for our protection in our Bill of Rights from the very tyranny and oppression that the majority would inflict on us, their fellow Americans, in their zeal to protect themselves at all costs. The cost in this case is Jo Anna and Michael Hurley's freedom, and the freedom of every American family with an immigrant family member.

James Madison wrote in a letter to Thomas Jefferson dated, Oct. 17, 1788:

> "Wherever the real power in a Government lies, there is the danger of oppression. In our Governments the real power lies in the majority of the Community, and the invasion of private rights is chiefly to be apprehended...from acts in which the Government is the mere instrument of the major number of the Constituents"

(See Hunt, G., ed, The Writings of James Madison, pp. 269-75, 1904, "Madison-Jefferson Correspondence On a Bill of Rights, Letter from James Madison to Thomas Jefferson (October 17, 1788)", 15 July 2004, http://1stam.umn.edu/main/historic/Jefferson%20Madison%20correspondence.htm)

Thomas Jefferson wrote in a letter to James Madison: "The tyranny of the legislatures is the most formidable dread at present, and will be for long years. [But]...The

declaration of rights will be the text whereby they will try all the acts of the federal government." (See Boyd, J., ed., The Papers of Thomas Jefferson, pp. 659-61, 1958. "Letter from Thomas Jefferson to James Madison (March 15, 1789)", Madison-Jefferson Correspondence On a Bill of Rights, 15 July 2004, http://1stam.umn.edu/main/historic/Jefferson %20 Madison%20 correspondence.htm)

These great men speak of "oppression" and "tyranny." Not of Kings, but of the U.S. Legislature, a political body prone to follow the dictates of the majority; prone to the desire for continued power through re–election. They also speak of the way, the

Framers provided, whereby any oppressive laws of the Legislature can be overturned: the Bill of Rights and the checks and balances of the Federal Courts.

Question (3) states: Whether the Italian Presidential pardon/expungement of Michael Hurley's 4 decade old drug conviction in Italy, bars use of that conviction as the means of the removal of Michael Hurley, expunges the record, and wipes out the conviction, so that there is no conviction for which Hurley would have had to answer, "Yes" to a question about his having a conviction, and whether denial of that would be tantamount to denial of equal protection under the law, which is the

constitutional right of his wife, Jo Anna Hurley, citizen. **(For Pardon see Appendix I)**

Regarding the first part of this question, the Ninth Circuit found in *Lujan-Armendariz v. INS,* 222 F.3d 728,732 (9th Cir.2000) that an expungement of a first-time drug offense under the Federal First Offender Act (FFOA) bars the effects of the conviction for the purposes of deportation.

Lujan states:

> "We do retain jurisdiction, however, to determine whether or not petitions challenging deportation orders are subject to the jurisdictional bar. Put another way, when an alien petitions for review of a removal order, we retain jurisdiction to determine whether we have jurisdiction to consider the petition....we hold that we do have jurisdiction to entertain the petitions because, as we explain below, neither

> petitioner stands 'convicted' for purposes of the immigration laws. Thus, neither petitioner falls within the class of persons whose challenges to removal we are precluded from reviewing."

Thus the standard of *Lujan-Armendariz* could have provided the 5th Circuit with jurisdiction to review the Hurley's petition, since Michael's conviction was a first–time offense, which was pardoned and expunged by the President of Italy. *Thus, his conviction is eliminated as the means of preventing judicial review.*

In *EX PARTE GARLAND*, 71 U.S. 333, 381(1866) speaking of the far-reaching effects of a Presidential pardon, the majority opinion ruled:

> "The Constitution provides that the President 'shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment'...This power of the President is not subject to legislative control. Congress can neither limit the effect of his pardon, nor exclude from its exercise any class of offenders....the inquiry arises as to the effect and operation of a pardon, and on this point all the authorities concur. A pardon reaches both the punishment prescribed for the offence and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offence."

Though Hurley did not have the benefit of a U.S. Presidential pardon, because his crime for which he was deported was, for all the better we pray, not committed here, but in Italy, nearly 40 years ago, then if the court can extend Jo Anna's right to Equal Protection

to her husband (with whom she is contractually bound), then by law, Michael can be found by his Italian Presidential pardon/expungement to be free of the effects of his conviction for any purposes including immigration. And, through Equal Protection his pardoned conviction cannot bar him from the right to answer "No" to any questions regarding it, since it is – *as if he had never committed the offense.* (Pardon – Certificate of Expiation, **Appendix I**; Italian Penal Code – Art. 151 – Amnesty, **Appendix I 2**; and the Certification of the translation, **Appendix I 3**; See the law upon which the pardon was based, D.P.R.N. 283, **Appendix J**; and the Certification of the translation, **Appendix J 2**

Finally, Equal Protection demands that if the Italian Conviction is sufficient to exclude Hurley, then the Italian Pardon is equally suffcient to bar his exclusion.

Question (4) refers to the requirements set forth by the BIA for the proper manner in which to obtain an admission, which then can be used for the purposes of deportation. The Board of Immigration in 1945 required that "four factors be present to exclude an applicant for entry for making an admission" (*Matter of J*, 2 I&N 285, 287 (BIA-1957). The second factor provides that an admission of a violation of a criminal statute that is "broad or contains a number of offenses presented in the disjunctive is not necessarily

a valid admission" (*Immigration Law and Crimes*, p.3-6) (See *Matter of B.M.*, 6 I&N 806 (BIA-1955) The Italian statute violated in Hurley's admission is very broad and presented in the disjunctive with wording regarding buying, selling, using, or exporting, etc., a variety of classes of drugs by individuals or by "authorized companies" such as pharmaceutical companies. (Record p.13/Ex.4B: *LAW 22...Art.6*)(See Addendum, p.6 for full translation)

The third factor required for an admission to be valid for purposes of excludability is that "a consular....official must provide the applicant for admission with a definition of the crime before a noncitizen can make a valid

admission to a crime involving...a controlled substance offense." (*Immigration Law and Crimes*, pp. 3-6/3-7), (*Matter of K*, 9 I&N 715 (BIA 1962), and, "a noncitizen must admit voluntarily to the elements of the offense after the official explains the offense in plain terms for it to constitute a valid admission." *Matter of G.M.*, 7 I&N Dec.40 (A.G.1956)

A reading of Record p.6/Exhibit 2A reveals that Hurley testified that his admission was not obtained properly by the Consular in Munich for purposes of excludability, in that no definition/explanation was afforded him. Without the use of this admission there is no evidence of his conviction other than his expungement document – the *Certificate of*

Expiation – which is a Presidential pardon and expungement sufficient to bar the use of the admission for removal purposes anyway. Thus, this may be moot.

Question (5): Visa Waiver (Appendix O)

On April 26, 2003, when Michael and Jo Anna Hurley returned from their trip to Europe, Michael attempted to use his B-1/B-2 Visa stamped "indefinitely", but he was not allowed and was forced by officials to use his Visa Waiver to enter the U.S. (Record p.4/Ex. 1A: Copy of B-1/B-2 Visa marked "indefinitely" on the expiration date; Record p.15/Ex. 5A(2): Visa Waiver of Michael Hurley stamped APR 26, 2003; Record p.5/Ex. 1B: Sworn Statement

by Jo Anna Hurley of what transpired on April 26 to prevent the use of B-1/B-2 Visa).

A thorough reading of Exhibit 1B, which relates how officials prevented Michael Hurley from using his B-1/B-2 Visa to enter the U.S. makes it clear that Hurley did not waive his right to due process "voluntarily," but that he was forced by officials to use the Visa Waiver that later deprived him of his right to due process as a legal immigrant, when he faced removal. Constitutional law requires that constitutional rights cannot be forcibly waived.

It is INA 217 that created this situation for the Hurleys. It states that there is an agreement between the United States and

"carriers" to accept aliens (preferentially) on the Visa Waiver, so that should there be a need to remove the alien, the carrier is responsible to pay for the removal flight.

When officials at the preflight inspection station (authorized by the Visa Waiver Program) refused to accept Michael Hurley's B-1/B-2 Visa, they provided a policing function for the U.S. government to ensure the use of the Visa Waiver. Thus, the government can deny the right of judicial review, and the Constitution becomes impotent in its ability to safeguard the rights of aliens or their U.S. citizen immediate family relatives. (See INA 217 Appendix O)

The fact that Michael did not voluntarily use his Visa Waiver to travel to the United States, is sufficient to stop the Visa Waiver bar to judicial review. Jo Anna Hurley challenges the Constitutionality of the Visa Waiver law by this reasoning: It provides by statute the means by which Jo Anna's husband can be *"seized"* (4th Amendment) and deported without judicial review. This is clearly against her 4th Amendment rights and Article 1, Section 9: "No *Bill of Attainder*.... shall be passed")

The Oxford English Dictionary, Vol. I, p.935, defines "Bill of Attainder" as: "One introduced or passed in the English

Parliament (first in 1459) for attainting any one *without a judicial trial*." [Italics mine]

Though an American citizen should never have to worry that she or any member of her family might be "tried" by the Legislature, this is in fact what has happened to Jo Anna.

"The Bill of Attainder Clause was intended not as a narrow, technical (and therefore soon to be outmoded) prohibition, but rather as an implementation of the separation of powers, a general safeguard against legislative exercise of the judicial function or more simply: *trial by legislature*." [italics mine] (See *U.S. v. Brown*, 381 U.S. 437, 440 (1965) (Addendum p.14)

If Congress in passing the Visa Waiver Program considers it not to be in violation of

the Constitution when used against an alien, because deportation is considered to be civil rather than criminal, then the words of a New York federal district court judge must be considered, wherein he wrote: "...it defies common experience to characterize deportation of an alien...as anything other than punishment for his crimes.", and whereby he argued against deportation as a strictly "civil" penalty. *(Beharry v. Reno*, 183 F.Supp. 2d 584 (E.D.N.Y. 2002).

Though the court in *Bridges v. Wixon* conceded to "technically" calling deportation non-criminal, they confirmed the need to safeguard the Bill of Rights pertaining to aliens:

> "...It is no answer that a deportation proceeding is technically Non-criminal in nature and that a deportable alien is not adjudged guilty of a 'crime.' Those are over subtle niceties that shed their significance when we are concerned with safeguarding the ideals of the Bill of Rights." (See *Bridges*, supra, p.164.)

Regarding *both* Jo Anna and Michael's rights as a family unit, the Visa Waiver statute is really a Bill of Attainder. (See INS v. Chadha, 462 U.S. 919 (1983) generally) (Addendum p.15)

Question (6) Good Moral Character

During Hurley's first one–month stay given to him by ICE, ICE instructed Michael to purchase a ticket to London. Michael did so. (The evidence of this e-ticket in Exhibit 12, was denied) The day of departure, June 21,

2004, they went to the airport knowing full well that if they would not have received a phone call from Sen. Hatch's office, telling them the stay was official, Michael would have been leaving on that plane.

The Hurleys showed throughout their ordeal their strict obedience to the law. (Record p.16/Exhibit 5B: Affidavit by Wilma Piccione attests to Michael's "voluntary departure.") All the folllowing attest this obedience and his good moral character:

1) The letter from ICE FOD Robinson to Senator Mary Landrieu, which confirms a second stay of removal made official on June 22, 2004 until January 21, 2005, (Appendix H)(Record p.18/Ex.6B), and...

2) a third stay of removal "granted through the deliberation of the private bill", and...

3) Hurley's compliance with his order of supervision.

Granting "voluntary departure" to Hurley who was being removed under INA 212(a)(2)(A)(i)(II) establishes good moral character because by statute ICE cannot grant voluntary departure under those conditions unless the conviction is more than 15 years old or has occurred before Nov. 29, 1990 and the alien shows good moral character. (*Immigration Law and Crimes*, pp. 9-5 to 9-9)

In *Matter of Carbajal,* I&N 272 (BIA-1978) the BIA reasoned: "Since a finding of good moral character is required for a grant of

voluntary departure, this record does not sustain a finding that these immigration violations rendered applicant a person of bad moral character."

Applying this reasoning to Hurley, the 4 decade old conviction in Italy cannot render Hurley a person of bad moral character, nor can Hurley's denial of having a former conviction do so. Also: "The BIA...held that a mechanism that ameliorates the consequences of a conviction for deportability eliminates the bar to good moral character." (*Immigration Law and Crimes*, p. 9-11). The invalid admission, the broad Italian statute upon which his conviction is based, and Hurley's pardon all ameliorate these consequences.

The Hurleys did all required to stay within the requirements of immigration law. Michael was never in the United States without either a legal Visa Waiver entry; the visa, A095 609 022, given to him when his I-485 package was accepted; or a stay of removal given him by ICE (altogether there were four). The only time one could establish a lack of mechanism to allow him to stay was the week, prior to the last order of removal, dated March 20, 2007, when Michael lost the 75 day protection granted by ICE to Congress for the renewal of private bills. During that week Jo Anna worked with Sen. Landrieu for another bill. That private bill is number S. 983, which should be in Congress today.

Officer Catalan's positive report and Hurley's compliance with his orders of supervision (Record pp. 14, 17–19/ Exs.5A, 6A, 6B, 6C), establish good moral character. Throughout Hurley was compliant, three times submitting himself for removal. He showed his good character in many ways, including his restraint in the way he handled himself at their business, when it was robbed and vandalized by the questionable people who shared the building they rented. He endured it all including his own financial ruin, and never gave up because of his deep love for his wife, Jo Anna and his love for Louisiana.

Question (7) can best be answered in the Petition for 60 Days Extension of Time to

Submit the Writ of Certiorari which was denied. But, briefly, after her husband's deportation, Jo Anna Hurley suffered maltreatment by persons working in her business, whom she thought she could trust, when she was embezzled from, robbed, and vandalized repeatedly in retribution, because she had reported to the police the suspected activity of one of them, of whom there was testimony that this person may have been selling marijuana. Jo Anna would not have had unsupervised help with Michael there. Due to Michael's deportation, Jo Anna is very close to being financially ruined. The stress of all of this has greatly worsened Jo Anna's health increasing the pain of her disease

exponentially and causing her to suffer pain and fatigue immeasurably as she fights her husband's immigration case and tries to divest herself of their used car business.

CONCLUSION

In Question (2) it is laid before the court many of the civil rights belonging to Jo Anna Piccione Hurley, which include unlawful seizure, the right not to be constrained to testify against oneself, the right not to be twice put in jeopardy for the same offense, the right to due process and equal protection under the law, the right not to be subject to any law that is a Bill of Attainder or an ex post facto law, and finally, the right not to have the obligations of her sacred contract of

marriage unreasonably impaired by any law written by Congress.

Now let us look at the rights given to Michael Anthony Hurley, her husband, by immigration law as it stands today. Does he have the right not to be seized and banished without first receiving due process in a court of law? No, he does not. Does he have the right to remain silent and not to testify against himself without risking being accused of misrepresentation? No, he does not. Does he have the right not to be twice put in jeopardy for the same offense for which he has already dearly paid? No, he does not. Does he have the right not to be subject to a law that is a Bill of Attainder? No, he does not. Both the

Visa Waiver law, INA 217, and INA 242, Judicial Review, are for him Bills of Attainder, which can banish him without any form of due process. Does he have the right not to be subject to a law that is an ex post facto law? No, he does not. The Retroactivity of the Act of 1996 and IIRIRA are for him ex post facto laws. Does he have the right to be as equally protected under the law as Jo Anna is? No, he does not. Finally, does he have the right not to have the obligations of his contract of marriage impaired by an unreasonable law written by Congress? No, he does not.

Petitioners have named eight Constitutional rights which Jo Anna Piccione Hurley has, and eight rights which Michael

Anthony Hurley, her husband, does not have. Eight positives and eight negatives equal ZERO. And, ZERO is the amount of Constitutional rights that the family of Michael and Jo Anna Hurley have together. ZERO is the amount of rights that the legal contractual unit of their marriage can enjoy. And therefore, ZERO is the amount of Constitutional rights that Jo Anna Piccione Hurley – a natural-born citizen of the United States of America – the land of the *Free*, has and will ever have as long as the Courts of this land uphold these unconstitutional laws that are depriving American citizens of the integrity of their family life, of their homes, lands, businesses, property, papers, and

effects, their right to work, and worst of all, of their family members, their freedom, and their beloved America. This is accomplished by the most arbitrary and unjust means depriving both immigrant and citizen of their most natural and reasonable rights which they ought to enjoy, for which our Fore-fathers sacrificed their lives, homes, and property, giving all so that we could inherit the freedom they fought so hard to provide. We ask the Court, where is that freedom now?

The Declaration of Independence:

"*We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life,*

Liberty and the Pursuit of Happiness. – That to secure these rights Governments are instituted among Men, deriving their just powers from the consent of the governed....."

That the rights of the family of Michael and Jo Anna Hurley also come from their Creator, and that their rights include all of the rights found in that Inspired Document – the Constitution of the United States of America – and that through the Guidance of Divine Providence, it is the moral obligation of every official of this government to bring its laws into compliance with our Constitution and Bill of Rights, so that the families which God has formed will be as protected by Our

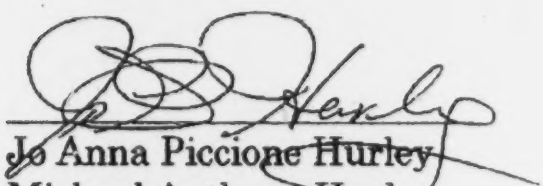
Constitution as are the lives of its individual citizens. (See ***Appendix Q)***

That when a man or woman repents of a mistake that is decades old and shows their compliance to the laws of the country in which they reside, then the National Tradition of the United States of America – which is a Christian tradition and a tradition of Freedom – must prevail through laws that include statutes of limitations, and that do not punish forever that which has been Washed by the Grace of Repentance.

In the courage of your convictions please grant this Writ of Certiorari to address these Constitutional Questions and these

differences of opinion on jurisdiction in the Circuit Courts.

Respectfully Submitted:



Jo Anna Piccione Hurley
Michael Anthony Hurley
211 Silver Creek Cl
Lafayette, Louisiana 70508

Proceeding *pro se*

May 12, 2008

92

Supreme Court, U.S.
FILED

071422 MAY 13 2008

OFFICE OF THE CLERK

No. (2)

IN THE
Supreme Court of the United States

MICHAEL ANTHONY HURLEY
JO ANNA PICCIONE HURLEY
Petitioners

Versus

UNITED STATES BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT, of the US Department of Homeland Security;
BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES, Of the US Department of Homeland Security
Respondents

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

APPENDIX

Michael and Jo Anna Hurley
211 Silver Creek Cl
Lafayette, Louisiana 70508
Tel: (337) 993-1776
Fax: (337) 993-1775
Proceeding Pro Se

APPENDIX

Appendix A Decision of United States Court
Of Appeals for the Fifth Circuit
Dismissed for lack of jurisdiction
Filed December 6, 2007

Appendix B Decision of the United States
District Court Western District
Of Louisiana
Lafayette-Opelousas Division
Denied for lack of subject
matter jurisdiction
Filed April 4, 2007

Appendix C Order of United States Court
Of Appeals – Fifth Circuit
Denying Rehearing
Filed February 13, 2008

Appendix D Order of the United States Court
Of Appeals – Fifth Circuit
Denying Motion to Stay
Deportation
Filed April 10, 2007

Appendix E Notice of Denial of Application to
Register Residence or Adjust
Status against Michael Anthony
Hurley, Visa No. A95 609 022

May 11, 2004

Appendix F Notice of Intent to Deport...
against Michael Hurley,
May 17, 2004

Appendix G Order of Removal Section
217 against Michael Hurley
May 17, 2004

Appendix H Stay of Removal GRANTED
June 22, 2004 and EXTENDED
January 13, 2005 through
Deliberation of Private Bill

Appendix I Pardon by President of Italy
Certificate Of Expiation
For Michael Hurley, formerly
Michael Liddell
5/22/1970

Appendix I 2 Italian Penal Code: Art. 151 –
Amnesty (English & Italian)

Appendix I 3 Certification of Translation of
I and I 2 Aug. 7, 2007

Appendix J Granting of Amnesty and Pardon
D.P.R.N. 22 May 1970

Appendix J 2 Certification of Translation of J
Sept. 26, 2007

Appendix K 28 U.S.C. 1254 – Certiorari

Appendix L 28 U.S.C. 2403(a) – Intervention on Constitutional Question

Appendix M Title II, Act of 1996, Section 212 Controlled Substances

Appendix N Classes of Deportable Aliens Section 237 of INA

Appendix O INA 217- Visa Waiver Program

Appendix P 8 U.S.C. 1252 – Judicial Review

Appendix Q The Constitution – Proposal for a Twenty-Eight Amendment

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

FILED Dec. 6, 2007

_____Stamp

No. 07-30313
Summary Calendar

Michael Anthony Hurley; JoAnna Hurley **Plaintiffs-Appellants**

Versus

United States Bureau of Immigration & Customs Enforcement, of the U.S. Dept. of Homeland Security; Bureau of Citizenship and Immigration Services, of the U.S. Dept. of Homeland Security **Defendants-Appellees**

Appeal from the United States District Court
For the Western District of Louisiana
U.S. 6:07-CV-608

Before WIENER, GARZA, and BENAVIDES,

Circuit Judges.

PER CURIAM:*

APPENDIX A

Proceeding *pro se*, Plaintiffs-Appellants (possibly, Petitioners-Appellants) Michael Anthony Hurley and Jo Anna P. Hurley, husband and wife, appeal the district court's denial of their Complaint/Motion for Temporary Restraining Order, Preliminary Injunction, Permanent Injunction and Other Relief filed April 3, 2007. In its order, the district court offered that any relief to which the Hurleys might be entitled must be sought from this court pursuant to 8 U.S.C. Sec. 1252 as amended by the REAL ID Act of 2005. The Hurleys timely filed a purported notice of appeal entitled Complaint for Temporary Restraining Order, Preliminary Injunction, Permanent

---

*Pursuant to 5th CIR.R.47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th CIR.R.47.5.4.

Injunction and Petition for Review and Other Relief. Liberally construing the filings of these *pro se* parties as a timely notice of appeal, we decline to construe it as a petition for review, because if were we thus to construe it, we would have to dismiss it for lack of jurisdiction. This is because, as a petition for review, it is untimely filed on its face.

We are not unmindful of the plight of the Hurleys resulting from a relatively minor controlled substance violation by Michael decades ago in a foreign country, which violation and the punishment for it were subsequently omitted or misreported by Michael in his responses to questions posed by immigration officials in this country, all of which has led to his removal to his native England. Neither are we unsympathetic with the Hurleys or unmindful of the legitimate

concern of congressional officials for the Hurleys' circumstances. We are, however, bound to follow the clear and unambiguous dictates of the law applicable to this situation, which begins now as always with the threshold question of our jurisdiction. Finding we have none, we have no choice but to dismiss this appeal *cum* petition for review for lack of jurisdiction as a result of the untimely filing of the Hurleys' pleadings even when construed as a notice of appeal.

DISMISSED for lack of jurisdiction.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

Michael Anthony Hurley and JoAnna P. Hurley	**Civil Action No. 07-608**
Versus	**Judge Tucker Melancon**
Immigration & Customs Enforcement, et al	**Magistrate Judge Mildred E. Methvin**

ORDER

Before the Court is plaintiff's Complaint/Motion for Temporary Restraining Order, Preliminary Injunction, Permanent Injunction and Other Relief [Rec. Doc. 1] which was filed April 3, 2007. The record reflects that plaintiffs are seeking to enjoin the U.S. Bureau of Immigration & Customs Enforcement and the U.S. Bureau of Citizenship & Immigration Services from removing, deporting or detaining plaintiff

Michael A. Hurley, a citizen of the United Kingdom and husband of plaintiff Jo Anna Hurley, a United States citizen.

U.S.C.A. Sec. 1252

(f) Limit on injunctive relief (1) In general: Regardless of the nature or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of part iV of this subchapter, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated. (2) Particular cases: Notwithstanding any other provision of law, no court shall enjoin the removal of any alien pursuant to a final order under this section unless the alien shows by clear and convincing evidence that the entry or execution of such order is prohibited as a matter of law.

(g) Exclusive jurisdiction:

Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

Pursuant to 8 U.S.C. Sec. 1252(f)(2) and 1252(g), as amended by the REAL ID Act of 2005, which governs judicial review of orders or removal, a district court lacks jurisdiction to prevent the execution of removal orders. See *Earls v. Copes, Warden, et al*, 2005 WL 2999149 (W.D. La. 2005)(citing *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471 (1999); *Alvidres-Reyes v. Reno*, 180 F.3d 199 (5th Cir. 1999); *Guzman v. Bureau of Immigration and Customs Enforcement*, 2006 WL 2345995 (S.D. Tex. 2006)(citing *Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000); *Novikova v. Prendez, U.S. Immigration and Customs Enforcement Office*, 2006 WL 1424255 (N.D. Tex. 2006); *United States v. Adeoshun*, 2006 WL 3462937 (E.D. La. 2006). Accordingly, it is

ORDERED that plaintiff's Complaint/Motion for Temporary Restraining Order, Preliminary Injunction, Permanent Injunction and Other Relief [Rec. Doc. 1] is DENIED for lack of subject matter jurisdiction.

Plaintiffs are advised that any relief they may be entitled to, which based on the allegations contained in their complaint facially appear to have no basis in law or in fact, must be directed to the United States Court of Appeals for the Fifth Circuit pursuant to 8 U.S.C. Sec. 1252, as amended by the REAL ID Act of 2005, and then, only if all of plaintiff Michael A. Hurley's administrative remedies have been exhausted.

Thus done and signed in Lafayette, Louisiana this 4th day of April, 2007.

"sg"

Tucker L. Melancon
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

FILED Feb. 13, 2008

_____**Stamp**

No. 07-30313

Michael Anthony Hurley; Jo Anna P. Hurley

Plaintiffs-Appellants

v.

United States Bureau of Immigration & Customs Enforcement, of the U.S. Dept. of Homeland Security; Bureau of Citizenship and Immigration Services, of The U.S. Dept. of Homeland Security

Defendants-Appellees

Appeal from the United States District Court
For the Western District of Louisiana, Lafayette

ON PETITION FOR REHEARING

Before WEINER, GARZA, and BENAVIDES, Circuit Judges.

PER CURIAM: IT IS ORDERED that the petition for rehearing is DENIED.

APPENDIX C

ENTERED FOR THE COURT:

"s/g"

United States Circuit Judge

REHG-2

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

FILED Apr. 10, 2007

_____Stamp

No. 07-30313

Michael Anthony Hurley; Jo Anna P. Hurley
Plaintiffs-Appellants

v.

United States Bureau of Immigration & Customs Enforcement, of the U.S. Dept. of Homeland Security; Bureau of Citizenship and Immigration Services, of The U.S. Dept. of Homeland Security
Defendants-Appellees

Appeal from the United States District Court
For the Western District of Louisiana, Lafayette

Before KING, HIGGINBOTHAM, and GARZA, Circuit Judges.

PER CURIAM: IT IS ORDERED that appellants motion to stay the deportation of Michael Anthony Hurley pending disposition of the appeal is DENIED.

MOT-21

APPENDIX D

U.S. Citizenship & Immigration Services
701 Loyola Ave. T8011
New Orleans, LA 70113
New Orleans District Office

Michael Anthony Hurley A 95 609 022
211 Silver Creek Circle
Lafayette, LA 70508

Notice of Denial of Application to Register Residence or Adjust Status

On July 24, 2003 you filed an Application to Register Residence or Adjust Status (Form I-485) pursuant to Section 245 of the Immigration and nationality Act, as amended (the Act).

Section 245 of the Act states, in pertinent part:

The status of an alien who was inspected and admitted or paroled into the United States may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if ... (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed.

Section 212(a) of the Act states, in pertinent part:

CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION. – Except as otherwise provided in this Act, aliens who are inadmissible under the

following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(2) CRIMIN AL AND RELATED GROUNDS. –

(A) CONVICTION OF CERTAIN CRIMES. –

(i) IN GENERAL. – Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

...

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance . . . is inadmissible.

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS. -

(C) (i) . . . Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

During your interview, under oath, when asked "Have you ever committed a crime of moral turpitude or a drug related offense, in or out of the United States, have you ever illicitly trafficked in any controlled substance?" Your answer on your I-485 application you marked "NO" and you verbally stated "NO". When shown a document signed by you stating that "I was imprisoned in Italy from 22nd August 1968 to 30 May 1970 for possession of 69 grams of hashish" you then admitted to being imprisoned and found guilty of a drug offense.

Accordingly, your application is hereby denied.

Furthermore, any employment authorization or advance parole previously granted on the basis of this application is hereby revoked.

May 11, 2004

"s/g"
Sara A. Smith,
SDAO for Michael
Conway, Acting
District Director,
Services

UNITED STATES DEPARTMENT
OF HOMELAND SECURITY
IMMIGRATION AND NATURALIZATION SERVICE

NOTICE OF INTENT TO DEPORT FOR VIOLATING THE TERMS OF YOUR ADMISSION UNDER SECTION 217 OF THE IMMIGRATION AND NATIONALITY

To: Michael Anthony HURLEY
File No. A95 609 022

C/O US Immigration and Naturalization Service
701 Loyola Avenue, New Orleans, Louisiana

The Immigration and Naturalization Service has determined that you entered the United States pursuant to Section 217 of the Immigration and Nationality Act. Accordingly, you executed a Form I-791, Visa Waiver Pilot Program Information form that explained to you the conditions of admission under the Visa Waiver Pilot Program. When you signed Form I-791, you also waived your right to contest deportability before an immigration judge and the Board of Immigration Appeals, and to any judicial review of any and all of the above decisions.

The Immigration and Naturalization service has determined that you have violated the terms of your admission under Section 217 of the Immigration and nationality act on the grounds that:

APPENDIX F

You failed to depart the United States on July 25, 2003.

Accordingly, the United States Immigration and Naturalization Service has entered an order that you be deported and removed from the United States.

Signature: "s/g"

Title: Assistant Special Agent in Charge,
George Lund, III

Date: May 17, 2004

Place: New Orleans, Louisiana

ORDER OF REMOVAL
SECTION 217

TO: Michael Anthony Hurley
A95 609 022
Having determined that:

1) You are neither a citizen nor a national of the United States, and

2) You applied for admission in the United States on April 26, 2003, at Dallas, Texas under section 217 of the Immigration and Nationality act, as a citizen of the United Kingdom, and authorized to remain until July 25, 2003, and

3) Upon application, you waived your right to contest any action for removal, except to apply for asylum, having applied for admission under section 217 of the Act;

4) You have violated the conditions of that admission in that:
(a)You are subject to removal from the United States pursuant to Section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act, as amended, in that you are a alien who has been convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of (or a conspiracy or attempt to violate) any law or regulation of a state, the United

States, or a foreign country relating to a controlled substance, (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(b) You are subject to removal from the United States pursuant to section 237(a)(1)(B) of the Immigration and Nationality act(Act), as amended, in that after admission as a nonimmigrant under Section 101(a)(15) of the Act, you have remained in the United States for a time longer than permitted, in violation of this Act.

By virtue of the authority vested in the Attorney General of the United States, and in me as his/her delegate, by the laws of the United States,

I HEREBY ORDER that you be removed from the United States of America.

"s/g" — May 17, 2004

James M. Johnston, — Date
Deputy Special Agent
In Charge
New Orleans, Louisiana

Office of Detention and Removal Operations

U.S. Department of Homeland Security
701 Loyola Avenue, Room T-8011
New Orleans, LA 70113

(STAMP) **U.S. Immigration and Customs Enforcement**

January 13, 2005

Mary L. Landrieu
United States Senator
Room 326, Federal Building
707 Florida Street
Baton Rouge, Louisiana 70801

Re: Michael Hurley, A95 609 022

Dear Senator Landrieu:

Please be advised that the Detention and Removal Operations Branch (DRO), New Orleans Field Office, is in receipt of your

APPENDIX H

January 11, 2005 request for an extension of the Stay of Deportation or Removal on behalf of the alien listed above.

On June 22, 2004, Mr. Hurley was granted a Stay of Deportation or Removal until January 21, 2005. In addition, Mr. Hurley was placed on an order of supervision on July 13, 2004, and is subject to reporting requirements. To date Mr. Hurley has reported to the New Orleans Field Office as required.

After a thorough consideration of the basis for the request, and your letter certifying the introduction of a private bill on Mr. Hurley's behalf on January 24, 2005, the request for Stay of Deportation or

Removal is granted through the deliberation of the private bill.

Should your office need any additional assistance please contact me directly at (504) 599-7815.

Sincerely,

"s/g"
Craig S. Robinson
Field Office Director

OFFICE OF THE DISTRICT ATTORNEY
AT
THE COURT OF ROME
EXECUTIVE OFFICE

(STAMP) Ministry of Finance
L 3.10

CERTIFICATE OF EXPIATION

THE UNDERSIGNED CHANCELLOR, IN RESPONSE TO A REQUEST BY LIDDELL MICHAEL CERTIFIES AND STATES AS FOLLOWS:

LIDDELL MICHAEL ANTHONY BORN IN INDIA ON 06/11/1946 WAS CONVICTED BY THE COURT OF ROME WITH SENTENCE ISSUED ON THE 03/17/1969 AND CONFIRMED IRREVOCABLY ON THE 10/10/1969 TO A SENTENCE OF 2 (TWO) YEARS IMPRISONMENT AND A FINE OF 200.000 LIRE (EQUAL TO 103.29 EURO) FOR VIOLATING THE LAWS ON DRUGS, CRIME COMMITTED ON 08/21/1968

APPENDIX I

ARRESTED ON 08/22/1968, REMAINED IN DETENTION UNTIL THE DATE OF 05/30/1970 (EQUAL TO 1 YEAR, 9 MONTHS AND 8 DAYS DETENTION).

UNDER DECLARATION ISSUED BY THE COURT OF ROME ON THE 02/15/1971, PARDON WAS APPLIED ACCORDING TO D.P.R.N. 283 OF 05/22/1970. THE REMAINING 2 MONTHS AND 22 DAYS OF DETENTION AND THE ENTIRE FINE WERE CONDONED [ABSOLVED OR REMITTED OR PARDONED].

THE FILE OF THE CONVICTION HAS BEEN PUT IN THE ARCHIVES.

ROME 07/05/2007 (SEAL OF THE REPUBLIC)

(STAMP) CHANCELLOR
Maria Antonietta Mianosa
"s/g"

A COPY OF THE ORIGINAL OF THE PRESENT DOCUMANT WAS RECEIVED,
FOR ADMINISTRATIVE USE ON THE 07/11/2007

BY: DOUGLAS MEAKIN (NOMINEE)

Art. 151 – Amnesty

The amnesty extinguishes the crime, and, if there is a sentence, it stops the execution of the sentence and the punishments.

If there are more crimes, the amnesty is applied to each crime for which has been issued.

The extinction of the crime because of the amnesty is limited to crimes committed the day before the amnesty became law, unless the amnesty establishes another date.

The amnesty may be put under certain conditions and obligations.

The amnesty does not include habitual criminals as in the case provided for in the

heading of art. 99: not to habitual criminals, or professionals by choice, other than the amnesty states otherwise.

CODICE PENALE: 3B

Art. 151 – Amnistia

L'amnistia estingue il reato, e, se vi e stata condanna, fa cessare l'esecuzione della condanna e le pene accessorie.

Nel concorso di piu reati, l'amnistia si applica ai singoli reati per i quali e conceduta.

La estinzione del reato per effetto dell'amnistia e limitata ai reati commessi a tutto il giorno precedente la data del decreto, salvo che questo stabilisca una data diversa.

L'amnistia puo essere sottoposta a condizioni o ad obblighi.

L'amnistia non si applica ai recidivi, nei casi preveduti dai capoversi dell'articolo 99, nea i delinquenti abituali, o prefessionali o per tendenza, salvo che il decreto disponga diversamente.

STATE OF LOUISIANA 3C

PARISH OF LAFAYETTE

I, Carolyn L. Greco, do hereby certify that this Certificate of Expiation for Liddell Michael, consisting of one (1) page, and Article 151 – Amnesty of the Italian Penal Code, consisting of one (1) page, are true and correct translations of the original documents presented to me in my offices, from Italian to English, that the translator is fluent and knowledgeable in both languages and has translated same to the best of their knowledge and ability.

/ "s/g" /

CAROLYN L. GRECO, President
LINGUA, INC.

Done and signed on this 7th day of August, 2007.

APPENDIX I 3

TRANSLATOR'S NOTE:

Section in italics shows text from previous page of original Italian document.

DECREE OF THE PRESIDENT OF THE REPUBLIC 22 MAY 1970, n. 283
(Gu n.127 of the 22/05/1970)
GRANTING OF AMNESTY AND PARDON.
(PUBLISHED IN THE OFFICIAL GAZETTE No. 127 of 22 MAY 1970)

PD:S3010856
URN:urn:nir:stato:decreto.presidente.republica:1970-05-22;283

DECREE OF THE PRESIDENT OF THE REPUBLIC 22 MAY 1970 n.283 Page 4 of 7

ARTICLE 6. (PARDON)

Other than what has been put forth in the preceding Articles 3 and 4, a pardon is granted, for every non-financial crime, with a period of not more than two years of detention and a fine of no more than two million lire, for

one or multiple detention periods.

In the evaluation of the preceding

punishments it has not been taken into

account:

c) For punishments expungeable because of

preceeding amnesties.

The pardon is reduced to half for convictions for crimes provided for under Articles 314 and 315 and Articles 317 and 319, first, second and third comma, 321, 322, second comma, 422, 438, 439 440, 441, 443, 444, 445, 446, 447, 528, 575, 576, 577, 628, 629, 630 of the Penal Code, including Articles 5 and 6, excluding the sentences for use and possession for personal use, and 18 of Law of 22 October 1954, No. 1041; With regard, moreover, for convictions for the crime provided for by Article 589 of the Penal Code when attached with the crime provided for by Article 593 of the same Penal Code and 133 of the sole text on the circulation on the roads approved by the decree of the President of the Republic, 15 June 1959, No. 393.

STATE OF LOUISIANA

PARISH OF LAFAYETTE

I, Carolyn L. Greco, do hereby certify that this document is text of Page 5 of the ITALIAN PENAL CODE, DECREE OF THE PRESIDENCE OF THE REPUBLIC 22 MAY 1970, No. 283 and text of previous pages of the same document as indicated in italics, that it is a true and correct translation of the original, presented to me in my offices, from Italian to English, that the translator is fluent and knowledgeable in both languages has translated same to the best of his knowledge and ability.

"s/g"
CAROLYN L. GRECO,
President LINGUA, INC.

September 26, 2007

28 U.S.C. § 1254. Courts of appeals; certiorari; certified questions: Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

APPENDIX K

28 U.S.C. § 2403(a). Intervention by United States or a State; constitutional question

(a) In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

APPENDIX L

TITLE II, IMMIGRATION AND NATIONALITY ACT OF 1996

Section 212(a)(2)(A)(i)(II)

(2) CRIMINAL AND RELATED GROUNDS.-

(A) CONVICTION OF CERTAIN CRIMES.-

(i) IN GENERAL.-Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude (other than a purely political offense or an attempt or conspiracy to commit such a crime), or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

SEC. 237. [8 U.S.C. 1227]

237 GENERAL CLASSES OF DEPORTABLE ALIENS:

(a) CLASSES OF DEPORTABLE ALIENS –

Any alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:

(1) INADMISSIBLE AT TIME OF ENTRY OR OF ADJUSTMENT OF STATUS OR VIOLATES STATUS -

(A) Inadmissible Aliens.-Any alien who at the time of entry or adjustment of status was within one or more of the classes of aliens inadmissible by the law existing at such time is deportable.

(B) Present In Violation of Law - Any alien who is present in the United States in violation of this Act or any other law of the United States is deportable.

217 VISA WAIVER PILOT PROGRAM FOR CERTAIN VISITORS [8 U.S.C. 1187]

(a) ESTABLISHMENT OF PILOT PROGRAM.-The Attorney General and the Secretary of State are authorized to establish a pilot program (hereinafter in this section referred to as the "pilot program") under which the requirement of paragraph (7)(B)(i)(II) of section 212(a) may be waived by the Attorney General, in consultation with the Secretary of State,and in accordance with this section, in the case of an alien who meets the following requirements:

(1) SEEKING ENTRY AS TOURIST FOR 90 DAYS OR LESS.-The alien is applying for admission during the pilot program period (as defined in subsection (e)) as a nonimmigrant visitor (described in section 101(a)(15)(B)) for a period not exceeding 90 days.

(2) NATIONAL OF PILOT PROGRAM COUNTRY.-The alien is a national of, and presents a passport issued by, a country which-
(A) extends (or agrees to extend) reciprocal privileges to citizens and nationals of the United States, and
(B) is designated as a pilot program country under subsection (c).

(3) EXECUTES IMMIGRATION FORMS.-The alien before the time of such admission completes such immigration form as the Attorney General shall establish.

(4) ENTRY INTO THE UNITED STATES.-If arriving by sea or air, the alien arrives at the port of entry into the United States on a carrier which has entered into an agreement with the Service to guarantee transport of the alien out of the United States if the alien is found inadmissible or deportable by an immigration officer.

(5) NOT A SAFETY THREAT.-The alien has been determined not to represent a threat to the welfare, health, safety, or security of the United States.

(6) NO PREVIOUS VIOLATION.-If the alien previously was admitted without a visa under this section, the alien must not have failed to comply with the conditions of any previous admission as such a nonimmigrant.

(7) ROUND-TRIP TICKET.-The alien is in possession of a round-trip transportation ticket (unless this requirement is waived by the Attorney General under regulations).

(b) WAIVER OF RIGHTS.-An alien may not be provided a waiver under the pilot program unless the alien has waived any right-

(1) to review or appeal under this Act of an immigration officer's determination as to the admissibility of the alien at the port of entry into the United States, or

(2) to contest, other than on the basis of an application for asylum, any action for removal of the alien.

8 U.S.C. § 1252. Judicial review of orders of removal (in part)

(a) Applicable provisions

(1) General orders of removal

Judicial review of a final order of removal (other than an order of removal without a hearing pursuant to section 1225 (b)(1) of this title) is governed only by chapter 158 of title 28, except as provided in subsection (b) of this section and except that the court may not order the taking of additional evidence under section 2347(c) of such title.

(2) Matters not subject to judicial review.....

(C) Orders against criminal aliens

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D), no court shall have jurisdiction to

review any final order of removal against an alien who is removable by reason of having committed a criminal offense covered in section 1182 (a)(2) or 1227 (a)(2)(A)(iii), (B), (C), or (D) of this title, or any offense covered by section 1227 (a)(2)(A)(ii) of this title for which both predicate offenses are, without regard to their date of commission, otherwise covered by section 1227 (a)(2)(A)(i) of this title.

(D) Judicial review of certain legal claims

Nothing in subparagraph (B) or (C), or in any other provision of this chapter (other than this section) which limits or eliminates judicial review, shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.....

(b) Requirements for review of orders of removal

With respect to review of an order of removal under subsection (a)(1) of this section, the following requirements apply:

(1) Deadline

The petition for review must be filed not later than 30 days after the date of the final order of removal.

(2) Venue and forms

The petition for review shall be filed with the court of appeals for the judicial circuit in which the immigration judge completed the proceedings. The record and briefs do not have to be printed. The court of appeals shall review the proceeding on a typewritten record and on typewritten briefs.....

(4) Scope and standard for review

Except as provided in paragraph (5)(B)—

(A) the court of appeals shall decide the petition only on the administrative record on which the order of removal is based,

(B) the administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary,

(C) a decision that an alien is not eligible for admission to the United States is conclusive unless manifestly contrary to law, and

(D) the Attorney General's discretionary judgment whether to grant relief under section 1158 (a) of this title shall be conclusive unless manifestly contrary to the law and an abuse of discretion.

No court shall reverse a determination made by a trier of fact with respect to the availability of corroborating evidence, as described in section 1158 (b)(1)(B), 1229a (c)(4)(B), or 1231 (b)(3)(C) of this title, unless the court finds, pursuant to subsection (b)(4)(B) of this section, that a reasonable trier of fact is compelled to conclude that such corroborating evidence is unavailable.

THE CONSTITUTION –

PROPOSAL FOR A TWENTY-EIGHTH AMENDMENT

Because of the separation of part–American/ part–immigrant families by the US Federal Government, for reasons that are small in nature in comparison to the sacredness of a family's right to be together, this amendment is proposed and for the following reasons brought forth:

1) Never again must part–American/part–immigrant families be separated by the federal government without due process.

2) Life is sacred. So, we have due process to protect each individual from false imprisonment and unjust loss of liberty.

3) The family and marriage are sacred. They need the same protection that due process affords the individual. The eternally binding and sacred units of marriage and family are as sacred in the eyes of God as Life itself.

4) Never again must a part–American family be pulled apart and deprived of their liberty to

be together, and their property, which consists of not only of the things they own together but their working contractual relationship, whereby as they work together as a family they provide and uplift, give and take and build wealth together – a wealth that is not only physical but also emotional and spiritual. It is that spiritual wealth that is the most sacred, so sacred that God, himself, would come down from Heaven to protect it, if it were not that our Heavenly Father must allow us our free agency to work it out ourselves. But let me be clear. *It is not God's will that so many families in America remain in jeopardy of separation without due process.*

Amendment 28:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, being citizens, which are legally married or are the member of a family consisting of, at minimum, husband and wife or parent and son/daughter and, at maximum, immediate family unit relations consisting of husband, wife, and unmarried sons and daughters age 22 or below, shall be considered to be a family.

Section 2. All members of such family units, including immigrants, which have as a member at least one citizen of the United States, shall be completely protected by the

Constitution of the United States, and shall enjoy all of the Constitutional rights given to their immediate family United States citizen relative.

Section 3. No law shall be written, which shall deny any immigrant, who is a member of such a family, due process of law in a federal District court or Court of Appeals in deciding matters of deportation or removal. An immigrant, who is a member of a part–American family shall be removed from these United States only for the most egregious of reasons, and not for crimes which have for a penalty 3 years or less of prison, unless it is believed beyond doubt that the immigrant is a dangerous threat to the security of the United States and the citizens thereof, wherein exceptions can be made by the deliberation of a federal judge, who has access to questions of law that are before the court pertaining to each individual case.

Section 4. Families are sacred and are the fundamental unit of society. Governments are formed for the protection of both individuals and families. Because family members have sacred obligations to one another for their care and maintenance, and because immediate families share in rights to property owned by them, *the most fundamental right of a family is the right to be together.* No law shall be formed which shall abridge the right of a

family to be together, except that separation of a family by imprisonment or removal/deportation is accomplished by due process of law, and this is because of crimes committed by a member of that family or because a member of such a family is a danger or threat to the security of the United States of America. Egregious crimes committed in foreign nations by immigrants, who are members of family units containing a U.S. citizen, may be considered for the purposes of removal, but the removal may be effected only by due process of law within the United States federal court system – citizens' courts.

Written the Summer of 2006
Submitted this 11th day of May, 2008 by:

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No. 07-1422

In the Supreme Court of the United States

MICHAEL ANTHONY HURLEY AND
JO ANNA PICCIONE HURLEY, PETITIONERS

v.

BUREAU OF IMMIGRATION & CUSTOMS
ENFORCEMENT, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly determined that there was no federal court jurisdiction under 8 U.S.C. 1252 to hear a challenge to a removal order against an alien admitted under the Visa Waiver Program, filed nearly three years after that order became final.

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In the Supreme Court of the United States

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A) is not published in the *Federal Reporter* but is reprinted at 257 Fed. Appx. 726. The decision of the district court (Pet. App. B) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on December 6, 2007. A petition for rehearing was denied on February 13, 2008 (Pet. App. C). A petition for a writ of certiorari was filed on May 13, 2008. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. Section 1187 of Title 8 authorizes establishment of the Visa Waiver Program (VWP). Under the VWP, alien visitors may enter the United States from designated countries for a period not to exceed 90 days without having first obtained a nonimmigrant visa. 8 U.S.C. 1187(a)(1). The statute also provides:

> An alien may not be provided a waiver under the program unless the alien has waived any right—
>
> (1) to review or appeal under this chapter of an immigration officer's determination as to the admissibility of the alien at the port of entry into the United States, or
>
> (2) to contest, other than on the basis of an application for asylum, any action for removal of the alien.

8 U.S.C. 1187(b).

Accordingly, the VWP is predicated on a type of *quid pro quo*: the Attorney General—now the Secretary of Homeland Secretary—agrees to waive an alien's inadmissability for lack of a visa if, and only if, that alien agrees before he is admitted to waive the right to challenge any later finding of removability. VWP Form I-94W includes a certification in which the alien must acknowledge that he understands and agrees to the conditions of admission. See, *e.g.*, *Hauda* v. *Clark*, 401 F.3d 1129, 1131-1133 (9th Cir. 2005).

b. Section 1255(a) of Title 8 authorizes the Attorney General or the Secretary of Homeland Secretary to adjust the status of an alien admitted to the United States to that of an alien lawfully admitted for permanent residence. Such adjustments of status are a discretionary form of relief, and appeals of denials are not permitted.

See, *e.g.*, *Scheerer* v. *United States Attorney Gen.*, 513 F.3d 1244, 1253 (11th Cir. 2008), petition for cert. pending, No. 07-1555 (filed June 13, 2008); 8 C.F.R. 245.2(a)(5)(ii) ("No appeal lies from the denial of an application [for adjustment of status] by the director.").

2. Petitioner Michael Hurley is a native of India and a citizen of the United Kingdom, and petitioner Jo Anna Hurley, his wife, is a citizen of the United States. Michael Hurley applied for admission to the United States under the VWP as a nonimmigrant visitor upon his arrival in Dallas on April 26, 2003. Pet. App. G. He was admitted for a 90-day period not to extend beyond July 25, 2003. *Ibid.*

On July 24, 2003, the day before his authorized stay was to expire, he filed an application to adjust his status. Pet. App. E. On May 11, 2004, Citizenship & Immigration Services (CIS) in the Department of Homeland Security (DHS) denied his application. *Ibid.*[1] CIS indicated that Michael Hurley was inadmissible because he had been convicted and imprisoned in Italy for possessing 69 grams of hashish and that, when asked under oath during an interview whether he had ever committed a drug-related offense (either in the United States or elsewhere), he had answered "no," as he had on his application to adjust status. *Ibid.*

On May 17, 2004, Immigration and Customs Enforcement (ICE) in DHS issued Michael Hurley a Notice of Intent to Deport for violating the terms of his admission under the VWP, specifically for failing to depart the United States on or before July 25, 2003. Pet. App. F.

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[1] On March 1, 2003, the Immigration and Naturalization Service (INS) ceased to exist as an independent agency within the Department of Justice, and its functions were transferred to the newly formed DHS. See Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135.

On the same day, ICE issued a removal order. Pet. App. G. Michael Hurley was deemed removable under 8 U.S.C. 1182(a)(2)(A)(i)(II), as an alien who has been convicted of a controlled-substance offense, and under 8 U.S.C. 1227(a)(1)(B), as a nonimmigrant who remained in the United States for a time longer than permitted. Pet. App. G. Petitioners did not seek any review of the removal order at that time.

On June 22, 2004, Michael Hurley was granted an initial stay of removal by the Field Director of ICE through January 21, 2005. Pet. App. H. Based upon the certification of Louisiana Senator Mary Landrieu that she had introduced a private bill in the Senate seeking relief on Michael Hurley's behalf, he was granted an additional stay of removal throughout the deliberation of the bill. *Ibid.* But the Senate did not enact the bill. Following a series of further stays of removal, Michael Hurley was ordered to report to a detention center on April 6, 2007.

3. On April 3, 2007, petitioners filed a complaint in the United States District Court for the Western District of Louisiana, seeking to enjoin defendants ICE and CIS from removing Michael Hurley to his home country. See Pet. App. B.

On April 4, 2007, the district court ruled that it lacked subject matter jurisdiction and dismissed the case. Pet. App. B. The court stated that, pursuant to 8 U.S.C. 1252(f)(2) and (g), it lacked jurisdiction to prevent the execution of the removal order. *Id.* at B3. The court also advised that "any relief [petitioners] may be entitled to, which based on the allegations contained in their complaint facially appear to have no basis in law or fact, must be directed to the United States Court of Appeals for the Fifth Circuit pursuant to 8 U.S.C. Sec.

1252, as amended by the Real ID Act of 2005, and then, only if all of plaintiff Michael A. Hurley's administrative remedies have been exhausted." *Id.* at B4.

On April 5, 2007, petitioners filed a document entitled Complaint for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction and Petition for Review and Other Relief, which the court of appeals liberally construed as a notice of appeal. On April 10, the court of appeals denied petitioners' motion for a stay of removal. Pet. App. D. On April 16, while the case was pending before the court of appeals, Michael Hurley was removed to England. Pet. 21.

On December 6, 2007, the court of appeals, in an unpublished *per curiam* opinion, dismissed the case for lack of jurisdiction. Pet. App. A. The court initially declined to consider the filing as a petition for review because, if it did so, it would be required to dismiss the case "because, as a petition for review, it is untimely filed on its face." *Id.* at A3. Even construing it as a notice of appeal, however, the court of appeals held that the case must be dismissed for lack of jurisdiction as a result of untimeliness. *Id.* at A4.

ARGUMENT

Petitioners seek review of the dismissal of a suit seeking to undo a nearly three-year-old removal order. Petitioners do not appear to dispute that the courts below lacked jurisdiction under 8 U.S.C. 1252, but rather raise numerous constitutional claims (including one to Section 1252(b)(1)'s 30-day time limit for filing a petition for review) and other arguments pertaining to the underlying determination of removability. The decisions below are correct, do not run afoul of the Constitution, and do not conflict with any decision of the courts of ap-

peals or of this Court. Further review is thus not warranted.

1. The decisions below reached the correct result, as the federal courts lack jurisdiction over petitioners' belated challenge to the removal order. Michael Hurley was ordered removed on May 17, 2004. Petitioners did not seek review of that order (whether before the BIA, the district court, or the court of appeals) until they filed their complaint in district court on April 3, 2007, followed by a similar filing in the court of appeals immediately after the first complaint was dismissed. Even assuming that Michael Hurley were entitled to any review at all—despite the broad VWP waiver of review applicable here pursuant to 8 U.S.C. 1187(b) (see pp. 2-3, *supra*)—petitioners never exhausted administrative remedies, in contravention of 8 U.S.C. 1252(d), and missed the 30-day deadline for filing a petition for review in the court of appeals, in contravention of 8 U.S.C. 1252(b)(1). Filing a petition under Section 1252 was the exclusive means of obtaining federal court review of the removal order. See 8 U.S.C. 1252(a)(5) and (g). Accordingly, the district court and court of appeals correctly dismissed the complaint for lack of jurisdiction.[2]

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[2] The court of appeals could have treated petitioners' second filing in one of two ways: (1) as an untimely petition for review, in which case it clearly would have been subject to dismissal for lack of jurisdiction under 8 U.S.C. 1252(b)(1), or (2) as a timely appeal of the district court's decision, in which case the district court's dismissal of the case for lack of jurisdiction clearly would be affirmed. Although the court of appeals initially indicated it would choose the latter path, its final disposition (dismissal for lack of jurisdiction due to untimeliness) suggests that it ultimately might have relied on the former path as well. Compare Pet. App. A3 with *id.* at A1. Either way, the result is the same: the federal courts lack jurisdiction over petitioners' belated challenge.

2. Petitioners' numerous and novel constitutional claims, spanning from due process to the contracts clause, are largely directed to the merits of the underlying determination of removability. Absent jurisdiction (the lack of which is established above), however, those claims are beside the point. In any event, they lack merit, and none of them implicates any conflict among the courts of appeals.

One of petitioners' constitutional claims, however, does appear directed to the jurisdictional issue: that the 30-day time limit set forth in Section 1252(b)(1) violates petitioners' due process rights. Pet. 31-34. Even assuming Michael Hurley's removal order was eligible for judicial review in the first place (which, as discussed above, is doubtful because he entered under the VWP), the 30-day time limit for seeking such review does not deprive petitioners of due process. That they were not aware of the time limit or alerted to it by their attorneys (Pet. 32) does not excuse their failure to comply with it, let alone give rise to a due process violation.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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No. 07-1422

IN THE

Supreme Court of the United States

MICHAEL ANTHONY HURLEY
JO ANNA PICCIONE HURLEY
Petitioners

Versus

UNITED STATES BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT;
BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES
Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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PETITIONER REPLY BRIEF

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QUESTION PRESENTED FOR REVIEW

1) Whether the court of appeals correctly determined that there was no federal court jurisdiction under 8 U.S.C. 1252, when section (f)(1) of 1252 abridges the immunities of citizens, such as Jo Anna Hurley, who are bound in contracts of marriage to immigrants, and sections (b)(1) and (d)(1) and other sections are adversarial to the rights of immigrants and their citizen spouses found in the 1st, 4th, 5th, and 14th amendments and the Obligation of Contracts clause.

2) Whether there is no firm evidence that Michael Hurley is in fact "convicted" for the purposes of removal because of the improperly obtained confession, the broad law under which he was convicted and because of his Italian pardon and expungement and its construction.

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STATEMENT

In section 2 of the Solicitor General's Statement, Respondents state as fact that "Michael Hurley is a native of India and a citizen of the United Kingdom", but to not confuse "native" with "indigenous", in fact, Michael Hurley is ¾ English/Scottish by blood and ¼ Celanese/Armenian and is a citizen of the United Kingdom.

Also, they neglected to inform that on July 24, 2003, when Michael Hurley filed an application to adjust status, he was given an A number by U.S.C.I.S., which is a legal visa, number A95 609 022. (Appendix H)

The "initial" stay of removal by ICE Field Director Robinson was not on June 22, 2004 as stated by Respondents, but was in fact granted within a few days after his May 2004 arrest by ICE officials in New Orleans, wherein he was handcuffed and told he was soon to be removed. Instead, FOD Robinson, allowed Hurley to return home and, a few days later, told both Michael and Jo Anna Hurley that Michael was being given one month to get a plane ticket for a voluntary departure. (App. E, F, G, & H); (Rec. Excpt 16)

ARGUMENT

8 U.S.C. 1252/JURISDICTION

This cannot be characterized as anything other than a stay granted by ICE. ICE knew where Michael was living and could have arrested him and removed him during that month, but they did not, because they had granted him a one-month stay prior to his voluntary departure date, later agreed upon as June 21, 2004. This "initial" stay is an administrative remedy, and would have precluded Michael Hurley from filing a petition for review within the 30-day requirement – 8 U.S.C. 1252(b)(1) – since all administrative remedies had NOT been exhausted as required by 8 U.S.C. 1252(d)(1).

Thus according to the facts of this case, 8 U.S.C. 1252 would have prevented Hurley from receiving due process even if he had attempted to file a petition within the 30-day window. **And, without due process Jo Anna Hurley's obligations of her contract of marriage with Michael could then have been unreasonably impaired by the federal government by law, which is expressly forbidden by the Obligations of Contracts clause of the Constitution of the United States.**

Even Respondents under Section 1.a. of their Argument agree that "petitioners never exhausted administrative remedies, in contravention of 8 U.S.C. 1252(d)." (Brief for Respondents, p.6) That is exactly our point: there was never any window of opportunity for due process for the Hurleys at all. Thus it would not have mattered whether they were aware of the 30-day time limit or not, and thus they did not *fail to comply*, nor do they need an excuse, but the Congress might need an excuse for why they are writing laws that are effectively denying due process to the immediate family relatives of American citizens and thus to the citizens themselves.

Beyond that, other circuit courts have decided in favor of immigrants who were misinformed or uninformed. (*Socop-Gonzales V. INS*, 272 F.3d 1176, 1193 (9th Cir.2000) & *Nagahi v. United States*, 219 F.3d 1166 (10th Cir.1986)

Did the Framers of our Constitution intend that such laws as 8 U.S.C. 1252(b)(1) would be written, so that protections of our freedom through our 5th and 14th amendment rights to due process could be so arbitrarily restricted so as to be almost non-existent? In essence, 1252 is saying: Yes, you have the right to due process and a redress of grievances, but you only have those rights for 30 days after your order of removal and only if the executive

branch did not apply an administrative remedy such as that stay of removal you received. With the stay granted and voluntary departure given that skinny little door which just barely cracked open to give you due process was permanently shut and you are forever barred from entering through it. And thus, freedom in America has become a thing of the past.

ARGUMENT – INA 237(a)(1)(B) and THE PARDON/EXPUNGEMENT

And, to illuminate the perspective of the unschooled immigrant more: How can Hurley be accused of staying longer than his Visa Waiver entry permitted by 4 years when he was given an A number and 4 stays by ICE – all administrative remedies? (Appendix G, INA 237(a)(1)(B). *The Hurleys believed Michael was in complete compliance with the law!* After all, both the Legislative Branch (the private bill) and the Executive Branch had created the situation that provided him with the stays he received. Why therefore does he have a 10-year bar of inadmissibility? Why not 3 years? Or one year?

The Hurleys' clearly made every effort to stay within the law. Even Hurley's denial of having a conviction was not a willful misrepresentation, but a sincere belief that

his pardon and expungement had wiped out that conviction for all purposes including immigration purposes. They continued to assert this in their Writ of Certiorari reminding the Court of the broad effects of a Presidential pardon and expungement. (K*ungys v. United States,* 485 U.S. 759, 780 (1988); (*Ex Parte Garland,* U.S. 333,381 (1866).

ARGUMENT – VISA WAIVER PROGRAM

In Section 1 of their Statement, Respondents state that:

> ....VWP is predicated on a type of *quid pro quo*: the Attorney General...agrees to waive an alien's inadmissibility *for lack of a visa* if, and only if, that alien agrees before he is admitted to waive the right to challenge any later finding of removability." (Italics mine) (Brief for Respondents, p.2).

The Court might wish to note that Hurley did not "lack a visa", but in *fact* had a B-1,B-2 Visa with an "indefinite" stamp on it, and so he did not according to these purposes even *need* a Visa Waiver. (Rec. Excpt, p.4)

In other words, by having a B-1,B-2 visa, this should give Hurley the right to due

process, because he did not require the waiver of a visa, since he had one! And, his attempt to use his B-1,B-2 Visa was foiled by the policing function of the preflight inspection station. (Rec. Excpt p. 5) The use of the Visa Waiver on that flight on April 26, 2003 was for him not a choice, but was a matter of U.S. policy. (8 U.S.C. 1187). The Constitutional right to due process cannot be barred when it is not given up voluntarily, but it is forced upon an alien by the very government that would later deny him his due process rights under the Constitution.

Respondents cite *Handa v. Clark*, 401 F.3d 1129 (9th Cir.2005), but Handa did not attempt to use any other visa than a Visa Waivor upon entering the United States as Hurley did.

ARGUMENT – ADJUSTMENT OF STATUS

They cite *Scheerer v U.S. Attorney Gen,,* 513 F.3d, 1244, 1253 (11th Cir.2008) and 8 C.F.R. 245.2(a)(5)(ii) "No appeal lies from an application [for adjustment of status] by the director." But, in *Dillingham v. INS*, though the BIA denied to adjust his status based on a conviction of simple possession of marijuana and cocaine, this decision was reversed and

remanded for adjustment of status by the 9th Circuit (*Id,* 267 F.3d 996 (9th Cir.2001)

Many requesting adjustment of status to resident do so, because they have a U.S. citizen spouse, child or parent. Denying them impartial due process wherein the immigrant may present evidence in his/her behalf, also denies due process to his/her U.S. citizen immediate family members, and is arbitrary, totalitarian, cruel, and adversarial to the Constitutional rights of their American relatives.

ARGUMENT – OBLIGATION OF CONTRACTS CLAUSE

This Petition for Writ of Certiorari is not made solely by Michäel Hurley, but by both Michael and Jo Anna Piccione Hurley, a citizen of the United States. Jo Anna's Constitutional right to due process before loosing her liberty to live in her own native land, which is a right given to her by the 5th and 14th amendments, will be denied her, if her husband (to whom she is obligated by contract of marriage, and who has been removed, without any opportunity to present his case before an impartial judge), never receives any form of unbiased due process in a court of law. She will effectively be removed with him because she will finally have to leave

America to fulfill the obligations of her contract of marriage. If she stays in America in order to keep her liberty, the obligations of her contract of marriage will be impaired, which is against the Obligations of Contracts clause of the Constitution of the United States.

ARGUMENT SUMMARY

Therefore, any bar to due process in the immigration case of Michael Hurley, such as the Visa Waiver bar, (8 U.S.C. 1187(b)(1&2) or the 30-day timeliness rule bar, (8 U.S.C. 1252(b)(1) or the implied bar to appeals of denials to adjust status (contrarily see *Dillingham v. INS,* supra) *or any other bar, cannot have precedence over the Constitutional right Jo Anna Hurley has to due process to protect her Liberty and the Constitutional right Jo Anna has to the protection which the Obligation of Contracts clause provides for her Contract of Marriage. The Constitution is the Supreme law of the land and immigration law cannot override it. The rights of a citizen of the United States in a marriage with an immigrant, must by Constitutional law, have greater weight than the lack of rights provided by law to the immigrant.*

The sacred nature of marriage and family is protected by the Constitution through the Obligations of Contracts clause, which provides that no law that impairs those obligations unreasonably may be written, and certainly only due process can allow for such a law to separate a sacred marriage and family through deportation/removal. Otherwise, the Constitution is made void rather than the unconstitutional immigration law being made void. The latter is what needs to happen here, no matter how "novel" that may sound to the ears of those who have forgotten what the words of the Constitution of the United States sound like, including the Congress which seems to have the shortest memories of all.

ARGUMENT – CONSTITUTIONALITY OF 8 U.S.C. 1252 IS IN QUESTION

Respondents argue that "Petitioners do not appear to dispute that the lower courts lacked jurisdiction under 8 U.S.C. 1252...", but our arguments in answer to Questions 2 and 3 of our Writ do, in fact, dispute that. Almost the whole of our argument in Question 2 disputes that the courts lacked jurisdiction under 1252, but especially pages 36 to 51, wherein we continually question the Constitutionality of those parts of 8 U.S.C. 1252 that so arbitrarily deny due process

through grossly restricting jurisdiction, creating tiny windows of time in which to file, and countless restrictions concerning when, by whom, how, and in which courts filing a petition for review can occur. (Pet.Writ Cert.)

On pages 43-44 of our Writ of Certiorari, Petitioners point out the most disturbing question of constitutionality found in 8 U.S.C. 1252(f)(1) in which we assert that this law is in contravention to the 14th amendment, which provides that *no law shall be made or enforced that "shall abridge the privileges or immunities of the citizens of the United States."* But, 1252(f)(1) states:

> Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme court) shall have jurisdiction...to enjoin or restrain the operation of the provisions of part IV of this subchapter.....other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.

In other words, 1252(f)(1) means that no matter that one of the parties is an American citizen and wife of an immigrant, like Jo Anna Hurley is, and no matter what action that

American wishes to take, such as her Injunction to stop her husband's removal; no American, including Jo Anna, can find due process and jurisdiction in any court except the Supreme Court of the United States, in which they have about a 1 in 100 chance of having their case taken up for review by the court!

How anyone can read the 14th Amendment and 1252(f)(1) back to back and not realize that the latter violates the 14th Amendment, seems impossible to Petitioners. How anyone cannot see that 1252(f)(1) abridges the "privileges" and "immunities", especially due process, of the citizens of the United States, seems ludicrous to Petitioners.

Therefore, for all of the above reasons, and more to come, Petitioners do indeed dispute that the District court and court of Appeals lacked jurisdiction under 1252.

ARGUMENT - JURISDICTION

Further, our argument in Question 3 points out that *Lujan-Armendariz v. INS*, 222 F.3d 728, 732 (9th Cir 2000), supports jurisdiction by the lower courts because it states, "We do retain jurisdiction...to determine whether or not petitions challenging deportation orders are subject to the jurisdictional bar", or

jurisdiction can be found to review cases in order to determine if immigrants are truly " 'convicted' for the purposes of the immigration laws."

ARGUMENT - MERITS

This in part refers to the merits of the cases, such as in the Hurley's case, determining whether M. Hurley's confession was obtained properly by the Embassy in Munich, (Matter of K, 9 I&N 715 (BIA-1962); (Matter of G.M. 7 I&N Dec.40 (A.G.1956), or whether his Presidential pardon expunging Hurley's conviction and pardoning the man, himself, thus demands Equal Protection, so that if Hurley's confession can be the cause of his removal, then the Italian pardon can equally bar his removal. (See *Dillingham v. INS*, 267 F3d. 996 (9th Cir.2001); Maisenberg v. U.S., 356 U.S. 670 (1958).

Finally, in Section 2 of their Argument, Respondents argue that the merits of the case against removability are lacking, but fail to provide any support for this, such as:
1) making an effort to support the viability of the improperly obtained confession (which was used for Hurley's removal), and was based on a broad statute (*Matter of B.M.*, 6 I&N 806 (BIA-1955) (*Matter of J*, 2 I&N 285, 287 (BIA-1957) (Rec. Excpt 6), or...

2) by providing any reasons why his pardon does not remove any chance that his confession can be used to remove him, (*Dillingham v. INS,* supra) (Note that in *Dillingham* the term "expungement" refers to a "rehabilitative" statute)(Brief of Appellants, p. 54) and if not that, then...
3) why his pardon, which does not identify the drug involved in his conviction, "cannot support an order of deportability" (*Matter of Paulus*, 11 I & N Dec.274 (BIA-1965); (Appendix I); (8 U.S.C. 1252(f)(2)

ARGUMENT – IRREPARABLE HARM

But, Jo Anna has shown:
1) how Michael's removal has caused her irreparable harm both financially and physically due to the very painful worsening of her health as she took over the full responsibility of their auto business and her husband's immigration case, and...
2) the great harm caused by the robbing and vandalism of her business assets by the very people working for her, who were doing part of the jobs Michael did before his removal. She has not filed a full police report of this because of her fears of retribution, although she has filed a full insurance report. (See our Petition for 60 Days Extension of Time to Submit the Writ...)

ARGUMENT - SUBSTANTIVENESS

The Government's arguments do not reach a substantive level of persuasion, because they cannot show any reason why Michael Hurley, who is a security guard at England's Heathrow Airport, having been given the highest security clearance in the United Kingdom by Scotland Yard, is a threat to our national security. Nor, can they show reason why a man with a 40-year-old drug conviction who, after being baptized into the Church of Jesus Christ of Latter-Day Saints and has not touched even alcohol or cigarettes in the past 35 years, is going to be likely to disobey our drug laws. (*Bridges v. Wixon*, 326 U.S., 135 (1945)

Nor do the Government's arguments (or actions in granting voluntary departure) question Hurley's good moral character. (*Matter of Carbajal*, I&N 272 (BIA-1978)

ARGUMENT – THE CONSTITUTION

In *The Immigration Reform Law of 1986* by N. Montwieler, the section on the INS and Drug Control [S16908], in the discussion of the Senate in passing this law, Senator Dole's words were:

> Both bills also provide authority for expeditious deportation of convicted felons. This is a particular concern of mine.... Will these provisions give the INS and the [BIA] sufficient authority to remove these felons from our criminal justice system without years of delays and appeals?

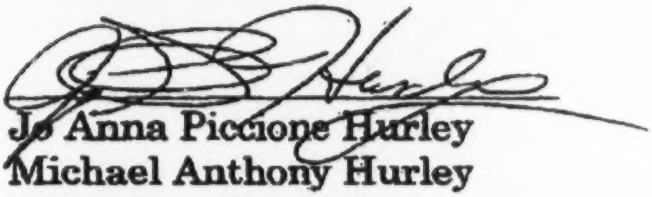
With this goal in mind, the Senate voted for immigration laws time and again that have stripped away the Constitutional rights of the US citizen family members of immigrants with old/minor convictions that do not reflect the immigrant's character at the time of his/her removal.

Since the 1996 Immigration Act, IIRIRA and 8 U.S.C. 1252, the Congress has been responsible for the de facto removal of countless numbers of our own faithful and patriotic citizens. Jo Anna is a native-dyed-in-the-wool-Mark Twain-loving/Thomas Jefferson/George Washington/Constitution-LOVING extremely patriotic American, who cannot begin to understand how she has lost her Constitutional rights to due process for herself and her family and her liberty too. Michael is a God-fearing/music-loving/British patriot who loves America, adores his wife, Jo Anna, and only wants her happiness, which he knows is best found in Louisiana.

CONCLUSION AND SUMMARY

No bar to jurisdiction in the immigration case of Michael Hurley has greater weight than the Constitutional right Jo Anna has to due process before her Contract of marriage and her liberty are impaired through his removal. There is no firm evidence that can clearly "convict" Michael of something that would bar his immigration to the United States. Michael is a man of good moral character and should be allowed to adjust status to permanent resident of the United States as soon as possible and live with his wife, Jo Anna, in beautiful Louisiana – their home.

Respectfully Submitted:



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Proceeding *pro se*

July 24, 2008